

OC250085

17 March 2025



I refer to your request dated 01 February 2025 under the Official Information Act 1982 (the Act), seeking the following information:

*"I would like to make an OIA request for all relevant emails and reports relating to the Govt agreeing to fund half of the CRL.
<https://www.beehive.govt.nz/release/government-confirms-city-rail-link-funding>".*

Seventeen documents fall within the scope of your request. The documents are listed in the document schedule attached as Annex 1. This schedule outlines how the documents you requested have been treated under the Act.

Certain information is withheld under the following sections of the Act:

- 9(2)(b)(ii) to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
- 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty.

Regarding the information that has been withheld under section 9 of the Act, I am satisfied that the reasons for withholding the information at this time are not outweighed by public interest considerations that would make it desirable to make the information available.

I am refusing your request under the following section of the Act regarding documents 16 and 17 as outlined in Annex 1:

- 18(d) the information requested is or will soon be publicly available.

You have the right to seek an investigation and review of this response by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website www.ombudsman.parliament.nz.

The Ministry publishes our Official Information Act responses, and the information contained in our reply to you may be published on the Ministry's website. Before publishing we will remove any personal or identifiable information.

Nāku noa, nā

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Bryan Field

Manager – Programme Monitoring and Investment Management

Annex 1: Document Schedule

Doc #	Reference number	Date	Title of Document	Proposed decision on request	Previously released?
1	Cabinet paper	09/12/2015	City Rail Link Project	Some material withheld under Section 9(2)(b)(ii) and Section 9(2)(g)(i)	No
2	Cabinet minute EGI-15-MIN-0197	09/12/2015	City Rail Link Project	Released in full	No
3	Cabinet summary EGI-15-SUB-0197	09/12/2015	City Rail Link Project	Released in full	No
4	Cabinet paper	06/07/2016	Emerging Crown negotiating position for the Auckland City Rail Link joint business plan	Some material withheld under Section 9(2)(b)(ii)	No
5	Cabinet minute EGI-16-MIN-0175	06/07/2016	Auckland City Rail Link joint business plan	Released in full	No
6	Cabinet summary EGI-16-SUB-0175	06/07/2016	Auckland City Rail Link joint business plan	Released in full	No
7	Cabinet paper	12/09/2016	Crown in-principle funding commitment for the Auckland City Rail Link Project	Some material withheld under Section 9(2)(b)(ii) and Section 9(2)(g)(i)	No
8	Cabinet minute CAB-16-MIN-0462	12/09/2016	City Rail Link Project	Released in full	No
9	Cabinet summary CAB-16-SUB-0462	07/09/2016	City Rail Link Project	Released in full	No
10	Cabinet paper	15/02/2017	Establishment of City Rail Link Limited	Released in full	No
11	Cabinet minute EGI-17-MIN-0009	15/02/2017	Establishment of City Rail Link Limited	Released in full	No
12	Cabinet summary EGI-17-SUB-0009	15/02/2017	Establishment of City Rail Link Limited	Released in full	No
13	Cabinet paper	26/07/2017	Auckland City Rail Link governance and funding arrangements	Released in full	No
14	Cabinet minute CAB-17-MIN-0332	26/07/2017	Auckland City Rail Link governance and funding arrangements	Released in full	No
15	Cabinet summary CAB-17-SUB-0332	26/07/2017	Auckland City Rail Link governance and funding arrangements	Released in full	No
16	Cabinet minute	April 2017	Budget 2017 Vote Transport https://www.treasury.govt.nz/sites/default/files/2017-11/b17-3722539.pdf	Refused under Section 18(d) Note: this document has been proactively released	Yes
17	Cabinet paper	July 2017	Budget 2017 https://www.treasury.govt.nz/sites/default/files/2017-11/b17-3700165.pdf	Refused under Section 18(d) Note: this document has been proactively released	Yes

Chair
Cabinet Economic Growth and Infrastructure Committee

CITY RAIL LINK PROJECT

Proposal

1. We seek the Committee's approval to enter negotiations with Auckland Council with a view to bringing forward the business plan and formalising the Government's commitment to provide funding for the City Rail Link.
2. We will report back to Cabinet with a proposal for next steps following discussions.

Executive Summary

3. The Prime Minister announced in June 2013 that the Government was committed to a joint business plan in 2017 and to provide its share of funding for a construction start from 2020. Auckland Council's planning to date, including its budgeting in the 2015 Long Term Plan, has been focused on construction of the main works beginning in 2018 with the full project completed by 2023/24.
4. Auckland Transport has also been working to this timeframe and has secured route protection, property purchases, planning consents and let contracts for construction of early works for the City Rail Link.
5. The Mayor of Auckland has written to the Minister of Transport seeking confirmation of an at least 50% contribution from the Crown to the City Rail Link from 2020 (total costs for the project are estimated between \$2 and \$3 billion). The Mayor considers the funding certainty such an announcement would deliver would enable the project pipeline to be confirmed and the project team to proceed with negotiating the associated contracts from an unencumbered position of strength. The Mayor also believes that funding certainty will assist in providing the commercial certainty for private sector investors that they are seeking. It would also enable Auckland Council to bear the financial costs and debt risk associated with beginning construction two years ahead of any Government funding being made available.
6. Given Auckland Transport's progress, several risks and other issues of concern to the Crown as co-funder of the City Rail Link are emerging, including: the size of its funding share; overall costs; project governance; procurement; ownership; and third party funding.
7. The Government may wish to ensure that it has an opportunity to address these issues now, when the opportunity to influence decisions is greater, as opposed to a joint business plan in 2017. A potential funding commitment would also enable Auckland Council to provide funding certainty to property developers in the CBD.

8. Formalising the Government's commitment to provide funding for the City Rail Link could bring forward the timing of the costs to Government, with some potentially being incurred in 2016/17 - however at this point it is expected that no costs will be incurred by the Government before 2020. This will depend on the outcome of negotiations, and the conditions agreed on the timing of the funding provided by the Government.

9. On balance, we consider that the advantages of addressing the range of risks to the Crown as co-funder for the City Rail Link and enabling Auckland Council to provide funding certainty for the project outweigh the disadvantages associated with a potential funding commitment.

10. We propose that the Minister of Transport and the Minister of Finance enter negotiations with Auckland Council with a view to bringing forward the business plan and formalising the Government's commitment to provide funding for the City Rail Link from 2020 and report back to Cabinet in the first half of 2016. However, this is a complex negotiation and timing will depend on the Government and Auckland Council reaching a satisfactory resolution of the issues raised during the negotiations.

11. The Prime Minister intends to make an announcement in early 2016, signalling that the Government and Auckland Council will enter negotiations on bringing forward the business plan and formalising the Government's funding commitment for the City Rail Link, subject to positive resolution of a range of funding, ownership and risk issues.

Background

12. In June 2013, the Prime Minister announced the Government's commitment to a joint business plan with Auckland Council for the City Rail Link (total costs for the project are estimated between \$2 and \$3 billion) in 2017 and to provide its share of funding for a construction start in 2020. He also announced that the Government would consider an earlier construction start date for the City Rail Link if Auckland's CBD employment increased by 25% over the February 2012 estimate; and annual rail patronage is on track to hit 20 million trips well before 2020.

13. In December 2013, Cabinet noted that significant funding may be required for the City Rail Link at the same time as the East West Connections and Additional Waitemata Harbour Crossing projects Out of Scope

14. Auckland Council released its Long Term (Budget) Plan in June 2015, which sets aside Council funding for construction of the main works to begin in 2018 to complete the full City Rail Link by 2023/24. This assumes that the Government would provide \$1 billion in funding from 2018/19, two years ahead of the 2020 timeframe announced by the Prime Minister in 2013.

15. Auckland Transport has also been working to this timeframe and has secured route protection, property purchases and planning consents for the City Rail Link s 9(2)(b)(ii)

Auckland Council is seeking funding certainty for the City Rail Link from 2020

16. After discussion with the Minister of Transport and the Minister of Finance, the Mayor of Auckland has written seeking “confirmation of an at least 50% contribution from the Crown to the project from 2020”.

17. The Mayor has indicated that a Government commitment would provide funding certainty for Auckland Council to continue procurement for the project to its planned timeframes. This will in turn provide certainty for private investors to proceed with developments planned in the CBD.

18. The Mayor has recognised that the timing of any commitment would be subject to the Government being confident that any issues associated with providing its share of funding for the project have been satisfactorily addressed.

Rail patronage and CBD employment thresholds

19. If rail patronage continues to grow at its current rate, it is likely to reach the 20 million threshold that was specified by the Prime Minister by 2018. At this rate of growth, Auckland Transport has indicated that there are likely to be capacity issues with Britomart during the morning peak period from around 2018 which may cause some access restrictions to the station¹.

20. However, the most recent figures for CBD employment suggest that it remains some way from reaching the 25% growth threshold, which means that the combined thresholds will not be met.

Rationale for considering the Auckland Mayor’s proposal

21. Given the progress on the City Rail Link to date, there is merit in considering the opportunity to assist Auckland Council to complete the project as early as possible. Formalising the Government’s funding commitment from 2020 would allow Auckland Council to bear the financial costs and debt risk associated with bringing the main construction works forward according to its preferred 2018 timeframe.

Addressing risks in the early stages of project development

22. Following the Prime Minister’s 2013 announcement, the previous Minister of Transport informed the Mayor of Auckland that new arrangements would need to be established to reflect the Government’s interest as funding partner. The Minister indicated that, until new arrangements are established, responsibility for progressing the project and the associated financial risks would continue to sit with Auckland Transport and Auckland Council. The expectation was that these issues would be addressed in a joint business plan in 2017.

23. As one of the biggest transport infrastructure projects to be undertaken in New Zealand, there are considerable risks attached to the City Rail Link (e.g. cost escalation, construction and timing). These risks are potentially developing now given Auckland Transport's recent progress on the project. The Government may wish to ensure that it has an opportunity to address these issues now, when the opportunity to influence decisions is greater, as opposed to waiting for a joint business plan in 2017 when the issues may become more material and challenging to resolve.

Providing certainty to property developers around the project timeframe

24. Auckland Council has set out in its 2015 Long Term (Budget) Plan to complete the City Rail Link by 2023, based on the assumption that the Government will provide \$1 billion of funding from 2018. As this timeframe differs with the Government's 2020 funding commitment, it creates uncertainty for developers with plans along the main construction works (e.g. the New Development Group² tower and Victoria Residences).

25. The Government may wish to enable Auckland Council to provide funding certainty to property developers in the CBD who are affected by the main City Rail Link construction works.

Options for Government

26. We have considered two possible options for the Government.

26.1. The status quo – reaffirm our commitment to a joint business plan for the City Rail Link with Auckland Council in 2017 with the expectation of providing Government funding from 2020 as planned (noting that this could still bring forward the impact on the Crown accounts to 2018).

26.2. Enter into negotiations with a view to bringing forward the business plan and formalising the Government's commitment to provide funding for the City Rail Link.

Status quo

27. Under this option, the Government could indicate to Auckland Council that it remains committed to undertaking a joint business plan for the City Rail Link in 2017.

28. A joint business plan is where the Government could address issues such as funding, procurement, risks, project governance and project management. However, given the pace of progress by Auckland Transport on the project, the Government may have limited opportunities to address these issues in 2017.

29. The main benefit of this option is that the Government would not accrue any costs to the Crown's current or capital account earlier than 2018.

30. In this scenario, it is likely that Auckland Council will not be able to proceed with the main construction works from 2018. It is unclear how the Council would re-

² A Shanghai-based company that plans to invest \$350 million in a 52-storey hotel and entertainment complex in the CBD.

allocate its existing funding and borrowing for the City Rail Link between 2018 and 2020.

Formalise Government's funding commitment

31. Entering into negotiations to formalise its current funding commitment would enable Auckland Council to begin construction of the City Rail Link main works in line with its desired 2018 timeframe. This option would involve the Government committing to Auckland Council, the scale and timing of its funding on a year-by-year basis from 2020.

32. The benefits of this option are:

32.1. Auckland Council could choose to bear the financial costs and debt risk associated with bringing construction forward to 2018 and provide certainty to developers likely to be affected by City Rail Link construction works.

32.2. The Government could negotiate its terms for providing funding at an earlier date, when it has a greater opportunity to influence decisions. This would include issues such as the funding share, costs, project governance, risk, ownership and third party funding.

33. Formalising the Government's commitment to provide funding for the City Rail Link could bring forward the timing of the costs being recognised in the Crown's accounts. Costs could be incurred from the year in which construction begins – potentially 2016/17 – or when a particular construction milestone is met (for example, the Government begins contributing once construction is 50 per cent complete).

34. The final impact will depend on the outcome of negotiations, and the conditions agreed on the timing of the funding provided by the Government – but at this point it is expected that no costs will be incurred by the Government before 2020.

35. s 9(2)(g)(i)

Therefore this is our recommended option.

Issues to address in a potential funding commitment

36. Should the Government wish to enter into negotiations with Auckland Council with a view to bringing forward the business plan and formalising the commitment to provide funding for the City Rail Link, then it would need to address the following issues.

Timing of funding

37. As noted above, the timing of funding requirements will depend on the outcome of negotiations, and the conditions agreed on the timing of the funding provided by the Government.

38. For example, costs could be incurred from the year in which construction begins – potentially 2016/17 – or parties could agree that the Government will

provide its share of funding after 50% of the project has been constructed, assuming this is expected to happen by 2020. In this scenario, the costs to the Crown will accrue only when the condition has been met, as opposed to when construction begins.

Funding share

39. The Government will need to determine with Auckland Council the proportion of its funding share for the City Rail Link. At the very least, the Government should seek to cap its funding share at half of the total capital cost, in accordance with Auckland Council's planning to date. It should also signal that it will not pay for financing costs incurred by Auckland Council to fund the project.

40. The Government's funding share is likely to fall somewhere between \$1 billion (as assumed in Auckland Council's 2015 Long Term (Budget) Plan) and \$1.5 billion (the upper end of the \$2 to \$3 billion cost range estimated for the project). The Mayor has sought confirmation of Government funding for at least half of the project's cost.

Overall costs

41. The Government will need to determine what costs it wants included in a potential funding commitment.

- Auckland Council has incurred costs for early construction works. The Government has not agreed to funding early works and will therefore need to determine how these are treated.
- The project will incur additional costs that are required to ensure the City Rail Link delivers the expected benefits, for example additional rolling stock or wider rail network upgrades.

42. The project will also incur significant operational costs once completed (estimated by Auckland Transport to be around \$50 million per annum) and these will be shared between Auckland Transport and the NZ Transport Agency. The Government would need to ensure that the project is designed to minimise whole-of-life costs.

Project governance, procurement and risks

43. The City Rail Link will be one of the largest transport infrastructure projects carried out in New Zealand to date. It will require strong and effective governance and project management to ensure that funding and construction risks are mitigated and the project is delivered to time, scope and cost parameters.

Ownership

44. The Crown, through KiwiRail, owns the national rail network. Auckland Council, given it is funding half the costs of the City Rail Link, may seek to own and operate the asset through Auckland Transport. The Government would need to consider the implications of Auckland Transport owning the asset, including what risks this creates for maintaining and operating the rest of the local and national network.

45. It is expected that a range of ownership options will be considered through the negotiations. If the Crown were to take an ownership stake in the asset when completed, this will have implications for how the cost is treated in the Crown accounts.

Opportunities for third party funding

46. A significant proportion of the benefits of the City Rail Link will fall to businesses and residents located in Auckland's CBD. Funding transport infrastructure projects through capturing value uplift for local businesses and residents is becoming increasingly common across the world.

47. The Government could explore opportunities with Auckland Council to recover a proportion of the project costs from CBD property owners and residents, as well as developers, through one of the Council's local charging mechanisms.

48. This approach would also send a signal that Auckland's CBD will need to take a greater responsibility for funding projects that both serve its growth and which property owners benefit from.

Conditions of wider interest to the Government

49. The Government may wish to consider other policy priorities in Auckland, for example housing, that it wishes to discuss as part of a potential funding commitment.

50. Investment in water, sewage, stormwater and local road infrastructure has been identified as an important constraint on faster housing development in Auckland. Auckland Council considers that it cannot accelerate those investments any further due to debt constraints and an inability to further increase rates.

51. The Government could raise these issues with the Council as part of the negotiations.

s 9(2)(b)(ii)

Next steps

57. The Minister of Transport intends to reply to the Mayor of Auckland at an appropriate time, indicating that the Government is willing to enter into negotiations with Auckland Council with a view to bringing forward the business plan and formalising the commitment to provide funding from 2020 for the City Rail Link. This would include the terms and conditions of a potential funding commitment that would enable Auckland Council to providing funding certainty for the City Rail Link to affected stakeholders. The reply will make it clear that any funding commitment will need to address the risks to the Crown from funding the project.

58. It is proposed that we oversee the Crown's negotiations on a proposed funding commitment with Auckland Council. We will ensure that the negotiations address the issues highlighted above and any other issues that may be identified over the course of the negotiations.

59. Officials anticipate that this process will take up to six months, and will include:

- development of a negotiating strategy for approval by lead Ministers
- undertaking due diligence on Auckland Transport's planning and project management to date
- negotiations with Auckland Council
- development of a potential funding commitment for approval by Government and Auckland Council
- Budget approvals.

60. We intend to report back to Cabinet in the first half of 2016. However, this is a complex negotiation and timing will depend on the Government and Auckland Council reaching a satisfactory resolution of the issues raised during the negotiations.

Consultation

61. The New Zealand Transport Agency and KiwiRail were consulted on this paper. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

62. There are no financial implications arising from this paper, but if the Government agrees to a funding commitment, there will be implications for future Budget decisions and in reporting on fiscal targets.

Human rights, gender, disability, legislative implications and Regulatory Impact Analysis

63. There are no human rights, gender, disability, or legislative implications arising from this paper. A Regulatory Impact Analysis is not required.

Publicity

64. The Prime Minister intends to make an announcement in-principle early in 2016. This will signal that Auckland Council has requested that the Government discuss the terms of a potential funding commitment for the City Rail Link to enable the Council to provide funding certainty for the project and affected stakeholders. The announcement will make it clear that any funding commitment will be subject to satisfactory resolution of issues associated with the project.

Recommendations

65. The Minister of Finance and the Minister of Transport jointly recommend that the Committee:

1. **note** that the Prime Minister announced (in June 2013) that the Government was committed to a joint business plan for the City Rail Link with Auckland Council in 2017 and providing its share of funding for a construction start in 2020; and would consider an earlier construction start only if the following thresholds were met:
 - an increase in Auckland CBD employment of 25 percent over the February 2012 estimate (the baseline); and
 - rail patronage is on track to hit 20 million trips a year well before 2020.
2. **note** that in December 2013, Cabinet noted that significant funding may be required for the City Rail Link at the same time as the East West Connections and Additional Waitemata Harbour Crossing projects Out of Scope
3. **note** that Auckland Council's 2015 Long Term (Budget) Plan, finalised in June 2015, sets aside Council funding for construction of the main works to begin in 2018 to complete the full project by 2023/24 and assumes Crown funding will also be provided from this date.
4. **note** Auckland Transport has also been working to this timeframe and has secured route protection, property purchases, planning consents and let contracts for construction of early works for the City Rail Link.

5. **note** that the Mayor of Auckland has requested that the Government provide a formal commitment of its share of funding for at least half of the total costs (estimated at \$2 to \$3 billion) of the project from 2020.
6. **note** that a possible formal funding commitment in 2016 could:
- allow the Government to address risks associated with project funding, planning and construction that are potentially developing now rather than in a joint business plan in 2017 when there will be limited opportunities to address these issues
 - enable Auckland Council to provide funding certainty for the City Rail Link to property developers in the CBD who are affected by construction of the main works
 - potentially have an earlier fiscal impact as the costs to the Crown will accrue from the year in which construction begins on the City Rail Link, irrespective of when the funding is actually provided.
7. **agree** that the Minister of Transport and the Minister of Finance enter into negotiations with Auckland Council with a view to bringing forward the business plan and formalising the commitment to provide Crown funding for the City Rail Link.
8. **agree** that any negotiation of a potential funding commitment will need to address:
- any conditions to reflect the timing for when Government funding will become available, based on progress against the expected project timeframe
 - the Government's and Auckland Council's shares of funding, and that the Government's share will not exceed 50% of the capital costs of the project and will not include any financing costs which Auckland Council may incur from commencing the main works in 2018
 - treatment of any early construction costs incurred prior to a funding agreement
 - treatment of any costs needed to provide for additional wider network improvements to fully deliver the benefits of the City Rail Link
 - how the City Rail Link's whole-of-life costs (capital and operational) can be minimised
 - governance and project management arrangements for the City Rail Link to ensure it is delivered to time, scope and cost parameters
 - the ownership arrangements for the City Rail Link asset once completed

- opportunities to part-fund the City Rail Link through third-party funding
 - any other risks or issues identified during the negotiations.
9. **agree** that the Minister of Transport reply to the Mayor of Auckland, indicating that the Government is willing to negotiate the terms and conditions of a potential funding commitment for the City Rail Link in line with recommendations 7 and 8 above.
 10. **authorise** a group of Ministers comprising the Deputy Prime Minister, Hon Steven Joyce and Hon Simon Bridges, to have Power to Act to take decisions on any matters arising between Cabinet meetings over the adjournment period that require Cabinet level decisions.
 11. **agree** that the Prime Minister will make an announcement in early 2016, signalling that the Government and Auckland Council will enter into discussions on bringing forward a business plan and formalising the Government's funding commitment for the City Rail Link, subject to a range of funding, ownership and risk issues being successfully negotiated and resolved.
 12. **note** that the Minister of Transport and the Minister of Finance will report back to Cabinet in the first half of 2016, with a proposed funding commitment and proposal for next steps following discussions with Auckland Council.

Hon Bill English
Minister of Finance

Hon Simon Bridges
Minister of Transport

Dated: _____



Cabinet Economic Growth and Infrastructure Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

City Rail Link Project

Portfolio Finance / Transport

On 9 December 2015, the Cabinet Economic Growth and Infrastructure Committee, having been authorised by Cabinet to have Power to Act **Out of Scope**

- 1 **noted** that in June 2013, the Prime Minister announced that the government:
 - 1.1 was committed to a joint business plan for the City Rail Link with Auckland Council in 2017 and providing its share of funding for a construction start in 2020;
 - 1.2 would consider an earlier construction start only if the following thresholds were met:
 - 1.2.1 an increase in Auckland CBD employment of 25 percent over the February 2012 estimate (the baseline); and
 - 1.2.2 rail patronage is on track to hit 20 million trips a year well before 2020;
- 2 **noted** that in December 2013, Cabinet noted that significant funding may be required for the City Rail Link at the same time as the East West Connections and Additional Waitemata Harbour Crossing projects **Out of Scope**
- 3 **noted** that Auckland Council's 2015 Long Term (Budget) Plan, finalised in June 2015, sets aside Council funding for construction of the main works to begin in 2018, to complete the full project by 2023/24, and assumes Crown funding will also be provided from this date;
- 4 **noted** that Auckland Transport has also been working to this timeframe, and has secured route protection, property purchases and planning consents, and let contracts for the construction of early works for the City Rail Link;
- 5 **noted** that the Mayor of Auckland has requested that the government provide a formal commitment of its share of funding for at least half of the total costs (estimated at \$2 to \$3 billion) of the project from 2020;
- 6 **noted** that a possible formal funding commitment in 2016 could:
 - 6.1 allow the government to address risks associated with project funding, planning and construction that are potentially developing now, rather than in a joint business plan in 2017 when there will be limited opportunities to address these issues;

- 6.2 enable the Auckland Council to provide funding certainty for the City Rail Link to property developers in the CBD who are affected by construction of the main works;
- 6.3 potentially have an earlier fiscal impact as the costs to the Crown will accrue from the year in which construction begins on the City Rail Link, irrespective of when the funding is actually provided;
- 7 **authorised** the Minister of Finance and the Minister of Transport to enter into negotiations with the Auckland Council with a view to bringing forward the business plan and formalising the commitment to provide Crown funding for the City Rail Link;
- 8 **agreed** that any negotiation of a potential funding commitment will need to address:
- 8.1 any conditions to reflect the timing for when government funding will become available, based on progress against the expected project timeframe;
 - 8.2 the government's and Auckland Council's shares of funding, and that the government's share will not exceed 50 percent of the capital costs of the project and will not include any financing costs which Auckland Council may incur from commencing the main works in 2018;
 - 8.3 treatment of any early construction costs incurred prior to a funding agreement;
 - 8.4 treatment of any costs needed to provide for additional wider network improvements to fully deliver the benefits of the City Rail Link;
 - 8.5 how the City Rail Link's whole-of-life costs (capital and operational) can be minimised;
 - 8.6 governance and project management arrangements for the City Rail Link to ensure it is delivered to time, scope and cost parameters;
 - 8.7 the ownership arrangements for the City Rail Link asset once completed;
 - 8.8 opportunities to part-fund the City Rail Link through third-party funding;
 - 8.9 any other risks or issues identified during the negotiations;
- 9 **agreed** that the Minister of Transport reply to the Mayor of Auckland, indicating that the government is willing to negotiate the terms and conditions of a potential funding commitment for the City Rail Link, in line with paragraphs 7 and 8 above;
- 10 **authorised** a group of Ministers, comprising the Deputy Prime Minister, the Associate Minister of Finance (Hon Steven Joyce) and the Minister of Transport, to have Power to Act to take decisions on any matters arising between Cabinet meetings over the adjournment period that require Cabinet level decisions;
- 11 **agreed** that the Prime Minister will make an announcement in early 2016, signalling that the government and the Auckland Council will enter into discussions on bringing forward a business plan and formalising the government's funding commitment for the City Rail Link, subject to a range of funding, ownership and risk issues being successfully negotiated and resolved;

- 12 **noted** that the Minister of Finance and the Minister of Transport will report back to Cabinet in the first half of 2016, with a proposed funding commitment and proposal for next steps following discussions with the Auckland Council.

Janine Harvey
Committee Secretary

Present:

Rt Hon John Key
Hon Bill English (Chair)
Hon Steven Joyce
Hon Paula Bennett
Hon Amy Adams
Hon Dr Nick Smith
Hon Michael Woodhouse
Hon Maggie Barry
Hon Jo Goodhew
Hon Nicky Wagner
Hon Louise Upston
Hon Paul Goldsmith

Officials present from:

Office of the Prime Minister
Officials Committee for EGI
Treasury
Ministry of Transport

Hard-copy distribution:

Cabinet Economic Growth and Infrastructure Committee
Office of the Prime Minister
Chief Executive, DPMC
Deputy Chief Executive, Policy, DPMC
Carolyn van Leuven, PAG, DPMC

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



Cabinet Economic Growth and Infrastructure Committee

Summary

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City Rail Link Project

Portfolios Finance / Transport

Purpose This paper seeks approval to enter negotiations with the Auckland Council with a view to bringing forward the business plan and formalising the government's commitment to provide funding for the City Rail Link.

Previous Consideration On 9 March 2015, the Cabinet Strategy Committee noted an item on Auckland transport strategy and funding issues **Out of Scope**

On 4 December 2013, EGI noted that significant funding may be required for the City Rail Link at the same time as the East West Connections and Additional Waitemata Harbour Crossing projects **Out of Scope**

Summary In 2013, the Prime Minister announced that the government was committed to a joint business plan for the City Rail Link with the Auckland Council in 2017, and to provide its share of funding for a construction start in 2020, subject to certain thresholds being met.

The Auckland Council's 2015 Long Term (Budget) Plan, finalised in June 2015, sets aside Council funding for construction of the main works to begin in 2018 and to complete the full project by 2023/24. The Council's Plan assumes Crown funding will also be provided from this date (2018/19). Auckland Transport has also been working to this timeframe.

The Mayor of Auckland has written to the Minister of Transport seeking confirmation of an at least 50 percent contribution from the Crown to the City Rail Link from 2020 (total costs for the project are estimated to be between \$2 billion – \$3 billion).

A potential funding commitment from the government now could provide an opportunity to address a number of emerging issues (including the size of the funding share, overall costs, project governance, procurement, ownership and third party funding). A funding commitment would also enable the Auckland Council to provide funding certainty to property developers in the CBD.

Possible options for the government are discussed on pages 4-5.

Authority is sought for the Minister of Finance and the Minister of Transport to enter into negotiations with the Auckland Council with a view to bringing forward the business plan for the project, and formalising the commitment to provide Crown funding for the City Rail Link.

Treasury's comments are on page 7-8.

Regulatory Impact Analysis	Not required.
Baseline Implications	None from this paper.
Legislative Implications	None.
Timing Issues	<p>It is proposed that the Prime Minister make an announcement in-principle in early 2016.</p> <p>A further report will be submitted to Cabinet in the first half of 2016, with a proposed funding commitment and proposal for next steps following discussions with the Auckland Council.</p>
Announcement	See above.
Proactive Release	None.
Consultation	<p>Paper prepared by Transport and Treasury. DPMC was informed. NZTA and KiwiRail were also consulted.</p> <p>The Ministers of Finance and Transport indicate that the Associate Minister of Finance (Hon Steven Joyce) was consulted, and that discussion is not required with the government caucus, or with other parties represented in Parliament.</p>

The Minister of Finance and the Minister of Transport recommend that the Committee:

- 1 note that in June 2013, the Prime Minister announced that the government:
 - 1.1 was committed to a joint business plan for the City Rail Link with Auckland Council in 2017 and providing its share of funding for a construction start in 2020;
 - 1.2 would consider an earlier construction start only if the following thresholds were met:
 - 1.2.1 an increase in Auckland CBD employment of 25 percent over the February 2012 estimate (the baseline); and
 - 1.2.2 rail patronage is on track to hit 20 million trips a year well before 2020;

- 2 note that in December 2013, Cabinet noted that significant funding may be required for the City Rail Link at the same time as the East West Connections and Additional Waitemata Harbour Crossing projects Out of Scope
- 3 note that Auckland Council's 2015 Long Term (Budget) Plan, finalised in June 2015, sets aside Council funding for construction of the main works to begin in 2018, to complete the full project by 2023/24, and assumes Crown funding will also be provided from this date;
- 4 note that Auckland Transport has also been working to this timeframe, and has secured route protection, property purchases and planning consents, and let contracts for the construction of early works for the City Rail Link;
- 5 note that the Mayor of Auckland has requested that the government provide a formal commitment of its share of funding for at least half of the total costs (estimated at \$2 to \$3 billion) of the project from 2020;
- 6 note that a possible formal funding commitment in 2016 could:
- 6.1 allow the government to address risks associated with project funding, planning and construction that are potentially developing now, rather than in a joint business plan in 2017 when there will be limited opportunities to address these issues;
 - 6.2 enable Auckland Council to provide funding certainty for the City Rail Link to property developers in the CBD who are affected by construction of the main works;
 - 6.3 potentially have an earlier fiscal impact as the costs to the Crown will accrue from the year in which construction begins on the City Rail Link, irrespective of when the funding is actually provided;
- 7 authorise the Minister of Finance and the Minister of Transport to enter into negotiations with the Auckland Council with a view to bringing forward the business plan and formalising the commitment to provide Crown funding for the City Rail Link;
- 8 agree that any negotiation of a potential funding commitment will need to address:
- 8.1 any conditions to reflect the timing for when government funding will become available, based on progress against the expected project timeframe;
 - 8.2 the government's and Auckland Council's shares of funding, and that the government's share will not exceed 50 percent of the capital costs of the project and will not include any financing costs which Auckland Council may incur from commencing the main works in 2018;
 - 8.3 treatment of any early construction costs incurred prior to a funding agreement;
 - 8.4 treatment of any costs needed to provide for additional wider network improvements to fully deliver the benefits of the City Rail Link;
 - 8.5 how the City Rail Link's whole-of-life costs (capital and operational) can be minimised;
 - 8.6 governance and project management arrangements for the City Rail Link to ensure it is delivered to time, scope and cost parameters;
 - 8.7 the ownership arrangements for the City Rail Link asset once completed;
 - 8.8 opportunities to part-fund the City Rail Link through third-party funding;

- 8.9 any other risks or issues identified during the negotiations;
- 9 agree that the Minister of Transport reply to the Mayor of Auckland, indicating that the government is willing to negotiate the terms and conditions of a potential funding commitment for the City Rail Link, in line with paragraphs 7 and 8 above;
- 10 authorise a group of Ministers, comprising the Deputy Prime Minister, Hon Steven Joyce and Hon Simon Bridges, to have Power to Act to take decisions on any matters arising between Cabinet meetings over the adjournment period that require Cabinet level decisions;
- 11 agree that the Prime Minister will make an announcement in early 2016, signalling that the government and the Auckland Council will enter into discussions on bringing forward a business plan and formalising the government's funding commitment for the City Rail Link, subject to a range of funding, ownership and risk issues being successfully negotiated and resolved;
- 12 note that the Minister of Finance and the Minister of Transport will report back to Cabinet in the first half of 2016, with a proposed funding commitment and proposal for next steps following discussions with the Auckland Council.

Janine Harvey
Committee Secretary

Hard-copy distribution:

Cabinet Economic Growth and Infrastructure Committee
Office of the Prime Minister
Chief Executive, DPMC
Deputy Chief Executive, Policy, DPMC
Carolyn van Leuven, PAG, DPMC

Chair
Cabinet Economic Growth and Infrastructure Committee

EMERGING CROWN NEGOTIATING POSITION FOR THE AUCKLAND CITY RAIL LINK JOINT BUSINESS PLAN

Proposal

1. We seek Cabinet's agreement in principle to the emerging Crown negotiating position for discussion with Auckland Council on the Auckland City Rail Link (CRL) joint business plan.

Executive summary

2. In December 2015, Cabinet approved a proposal for the Minister of Finance and the Minister of Transport to enter negotiations with Auckland Council with a view to bringing forward the joint business plan (originally intended for 2017) and formalising the Government's commitment to provide funding for the CRL [EGI-15-MIN-0197 refers]. The Prime Minister announced this position in January 2016.
3. We have appointed a negotiating team for the Crown that has made good progress in identifying the key risks to address during the negotiations. We have given the team a mandate to begin exploring these issues with Auckland Council and Auckland Transport. These discussions with senior management have been very positive and have established broad alignment in thinking around the risks associated with the project and how these may be jointly addressed. We expect formal negotiations to be completed before the end of August 2016, when we will report back with a proposed funding commitment.
4. We have directed the negotiating team to limit the scope of the negotiations to the main construction works and the early works (excluding financing costs) and to proceed on the basis that the Crown will provide funding for 50 percent of these costs. The estimated funding commitment for the Crown will be \$1.68 billion (a 50 percent share of around \$3.37 billion).
5. We have directed the negotiating team to develop advice on what the Government's governance objectives should be and begin exploring with Auckland Council and Auckland Transport what a joint governance structure could look like to deliver the project and to allocate risks. As part of a more explicit governance role, we will also seek Auckland Council's agreement to a review of Auckland Transport's current procurement strategy to ensure this provides value for money and optimises whole-of-life costs.

6. We have asked the negotiating team to explore with Auckland Council establishing a principle of equally shared funding (50-50) between the Crown and Auckland Council for future passenger-related rail network upgrades (tracks, signalling and associated infrastructure), using the CRL funding commitment as leverage. This would ensure that the Council is incentivised to consider and prioritise any rail investment alongside other transport network investments, such as roads that are funded on a shared basis through the National Land Transport Programme. This may also provide substantial long-term savings for the Crown given that it is currently expected to provide funding for 100 per cent of all track and associated infrastructure upgrades (officials estimate savings of up to \$755 million over the next 30 years).
7. The negotiating team is currently focusing on further developing its advice around the timing and fiscal impacts of Crown funding, the issues associated with the existing rail operating model and how this can be addressed through the CRL joint business plan, and how the Crown's funding commitment could be linked to wider priorities around housing (this was not part of the formal Cabinet mandate but was discussed with Cabinet at the time). We intend to advise Cabinet on these issues after we have been briefed by officials.
8. We do not intend to make any public statements following decisions taken on this paper. Given that the negotiations are at a sensitive stage, any public statements could put the Crown's position at risk and weaken any negotiating leverage it currently has. Ministers may consider the merit in providing a conditional statement of funding certainty should it become apparent that the construction sector requires this to engage and compete in Auckland Transport's procurement process.

Background

9. In December 2015, Cabinet authorised the Minister of Finance and the Minister of Transport to enter negotiations with Auckland Council with a view to bringing forward the joint business plan and formalising the Government's commitment to provide funding for the CRL [EGI-15-MIN-0197 refers]. The Prime Minister announced this decision in January 2016.
10. Cabinet also agreed in December that the negotiations should address the following parameters:
 - 10.1. any conditions to reflect the timing for when Government funding will become available, based on progress against the expected project timeframe
 - 10.2. the Government and Auckland Council's shares of funding, and that the Government's share of funding will not exceed 50 per cent of the capital costs of the project and will not include any financing costs which Auckland Council may incur from commencing the main works in 2018
 - 10.3. treatment of early construction costs incurred prior to a funding agreement (or joint business plan)
 - 10.4. treatment of any costs needed to provide for additional wider network improvements to fully deliver the benefits of the CRL

- 10.5. how the CRL's whole-of-life costs can be minimised
- 10.6. governance and project management arrangements for the CRL to ensure it is delivered to time, scope and cost parameters
- 10.7. the ownership arrangements for the CRL asset once completed
- 10.8. opportunities to part-fund the CRL through third-party funding
- 10.9. any other risks or issues identified during the negotiations.
11. Cabinet noted that the Minister of Finance and the Minister of Transport would report back in the first half of 2016 with a proposed funding commitment and proposal for next steps following discussions with Auckland Council. Following Cabinet's decisions, the Minister of Finance has delegated his oversight responsibilities for the CRL negotiations to the Associate Minister of Finance.
12. This paper outlines the emerging Crown position and seeks in principle agreement to certain directions. We expect the negotiations to be finalised before the end of August, when we will be able to report back with a full funding commitment proposal.

Progress

13. Simon Allen and Geoff Dangerfield have been engaged to lead a negotiating team for the Crown comprising officials from the Ministry of Transport and the Treasury. Simon Allen has been involved in a number of key agreements for the Crown such as Crown Fibre and the SkyCity Convention Centre. Geoff Dangerfield has served in a number of leadership roles in the public sector, most recently as Chief Executive of the New Zealand Transport Agency.
14. We have been meeting regularly with the negotiating team to consider progress and to provide direction on key issues.
15. The negotiating team has made good progress in developing its thinking around the key risks that the Government will need to address during the negotiations, and we have given the team a mandate to begin exploring these with Auckland Council and Auckland Transport.
16. The lead negotiators have held a number of informal meetings with the Chief Executives of Auckland Council and Auckland Transport. These meetings have been very positive and have established broad alignment in thinking around project risks.

Emerging Crown position

Amount of the Crown's share of funding

17. There are four broad packages of works that we have considered for the scope of the negotiations.

s 9(2)(b)(ii)

18. We have provided the negotiating team with a clear steer to limit the scope of the negotiations to the main construction works (package I) and the early works (package II, excluding financing costs) and to proceed on the basis that the Crown will provide funding for 50 per cent of these costs. Packages I and II align with Auckland Transport's business case for the CRL and align with its and Auckland Council's expectations for the scope of the Crown's funding commitment.
19. The Treasury are of the view that the early works should not be included because they do not see any additional value to the Crown given that the Council have already agreed to finance them, and because they believe a precedent would be set under which the Crown retrospectively funds projects that have commenced without being assessed by central government.
20. Further work is needed with Auckland Council and Auckland Transport to identify the final amount, but at this stage officials estimate that the Crown's funding share is \$1.68 billion.
21. At this stage, we do not think it necessary to include any of the works contained in packages III and IV, as these will be considered through the Budget or other funding processes. However, these wider works could be included in the Crown's funding commitment if there is an opportunity to leverage concessions from Auckland Council on housing priorities.

Delivering the CRL and allocation of risks

22. We have considered two broad options for the role that the Government could take in delivering the CRL and managing its risks:
 - 22.1. seek a governance role in a monitoring and advisory capacity while allowing Auckland Transport the final decision rights and responsibility for the project risks; or
 - 22.2. seek an explicit joint governance role with Auckland Council and Auckland Transport which would necessarily involve complete sharing of project risks on an ongoing basis.
23. On balance, we favour a more explicit joint governance role for the Government as this would provide us with a direct and more proactive role in managing risks and making decisions on how the project will be delivered, including scope changes and potential cost overruns.
24. Adopting an arm's-length approach may minimise the risks to the Crown in the first instance but there is a significant risk that Auckland Council would revert to the Crown as a funder for any major risks to the project's successful completion.
25. We have directed the negotiating team to develop advice on what the Government's governance objectives should be and to begin exploring with Auckland Council and Auckland Transport what a joint governance structure could look like to deliver the project and to manage and share risks.
26. As part of a more explicit governance role, we will also seek Auckland Council's agreement to a review of the current procurement strategy to ensure this provides value for money and optimises whole-of-life costs.

Establishing a principle of equally shared funding for passenger-related rail upgrades

27. Given the leverage provided by the Crown's funding commitment, and the expected network enhancement needed over the next 30 years, the CRL negotiations provide an opportunity to agree a shift in the current funding arrangements where the Crown is currently expected to provide funding for 100 per cent of all track and associated infrastructure upgrades across the Auckland network.
28. We have asked the negotiating team to explore with Auckland Council establishing a principle of equally shared funding (50-50) between the Crown and Auckland Council for future passenger-related rail network upgrades (tracks, signalling and associated infrastructure).

29.

s 9(2)(b)(ii)

This would ensure that the Council is incentivised to consider and prioritise any rail investment alongside other transport network investments, such as roads that are funded on a shared basis through the National Land Transport Programme. s 9(2)(b)(ii)

Officials have estimated these figures based on the 30-year programme of works that KiwiRail and Auckland Transport have identified as needed to upgrade the Auckland rail network in line with forecast growth in passenger and freight demand. We recognise the risk that Auckland Council's current funding programmes are deprioritised to address any new network costs, and officials are exploring this.

Outstanding issues

30. In addition to exploring the issues above with Auckland Council and Auckland Transport, the negotiating team is currently focusing on further developing its advice around:
- 30.1. the timing of Crown funding. Officials are assessing the fiscal impacts of the Crown's contribution, which will depend on the nature and timing of the funding commitment made by the Crown.
 - 30.2. what operating model should be put in place to operate the CRL and the wider Auckland rail network safely and effectively.
 - 30.3. whether and how the Crown's funding commitment could be used to progress wider priorities around housing. Officials are assessing what mechanisms the Government could pursue as part of its CRL funding commitment.
31. We intend to advise Cabinet on these issues after we have been briefed by officials.

Next steps

32. After the negotiating team has agreed a draft joint business plan with Auckland Council and Auckland Transport, we intend to present this to Cabinet for approval by the end of August 2016 with a proposed funding commitment. As part of our briefing to Cabinet, we will highlight any changes that may have been required to the current Crown position and provide our view on the reasons why these were necessary.

33. Table 2 provides a summary of the negotiating team's progress against the parameters that Cabinet agreed for the negotiations.

Table 2 – Summary of progress against Cabinet's mandate for the negotiations

Cabinet mandate	Progress
Conditions to reflect the timing of Crown funding	Negotiating team to provide further advice on fiscal impacts and governance arrangements
Crown and Auckland Council's shares of funding	Seeking Cabinet agreement in principle, in this paper, that the Crown provides 50 per cent of the agreed capital costs and will not contribute to Auckland Council's financing costs
Treatment of early construction costs	Seeking Cabinet agreement in principle, in this paper, that these will be included in the final joint business plan
Treatment of wider network improvement costs	Seeking Cabinet agreement in principle, in this paper, that these will not be included in the final joint business plan unless there is an opportunity to use them as leverage for wider policy concessions
Minimising the whole-of-life costs	This will be addressed through a review of the current procurement strategy that ensures it provides value for money
Governance and project management arrangements	Negotiating team to provide further advice on how a joint governance and risk-sharing structure could be set up to deliver the CRL
Ownership arrangements for the CRL when it is delivered	Negotiating team to provide further advice around the relative merits of various operating models
Opportunities for third-party funding	Negotiating team to provide further advice on how a joint governance and risk-sharing structure could be set up to deliver the CRL
Any other risks or issues	Negotiating team to advice as negotiations progress

Consultation

34. Consultation with other agencies was not necessary in the development of this paper. The negotiating team has been working with the New Zealand Transport Agency and KiwiRail on the matters covered in this paper. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

35. There are no financial implications arising from this paper, but if and when the Government agrees to a funding commitment, there will be implications for future Budget decisions and in reporting on fiscal targets.

Human rights, gender, disability, legislative implications and Regulatory Impact Analysis

36. There are no human rights, gender, disability, or legislative implications arising from this paper. A Regulatory Impact Analysis is not required.

Publicity

37. We do not intend to make any public statements following decisions taken on this paper. Given that the negotiations are at a sensitive stage, any public statements could put the Crown's position at risk and weaken any negotiating leverage it currently has.
38. If it becomes apparent that the construction sector requires further certainty to engage and compete in Auckland Transport's procurement process, Ministers may consider the merit in providing a conditional statement of funding certainty to provide confidence to the market.

Recommendations

39. The Associate Minister of Finance and the Minister of Transport jointly recommend that the Committee:
1. **note** that negotiations are underway with Auckland Council and Auckland Transport on the City Rail Link joint business plan and the Associate Minister of Finance and the Minister of Transport are seeking Cabinet's agreement in principle to the emerging Crown negotiation position
 2. **note** that the Associate Minister of Finance and the Minister of Transport will report back by the end of August 2016 with a proposed joint business plan that addresses key risks for the Crown and enables it to formalise its funding commitment for the City Rail Link
 3. **note** that when the Associate Minister of Finance and the Minister of Transport report back by the end of August 2016, Cabinet will be able to consider the final joint business plan in full and confirm its provisions after the Crown negotiating team has agreed this with Auckland Council and Auckland Transport
 4. **agree** in principle that the current negotiating position is for the Crown to provide 50 per cent of the agreed capital costs of the City Rail Link
 5. **agree** in principle that the current negotiating position is that the early works undertaken before agreement on a joint business plan will be included in the final joint business plan, minus any financing costs incurred by Auckland Council
 6. **note** that the estimated funding share for the Crown is \$1.68 billion

7. **agree** in principle that the current negotiating position is that the wider network improvements needed to realise the full benefits of the City Rail Link are not included in the final joint business plan unless there is an opportunity to use these as leverage for wider policy concessions
8. **agree** in principle that the Crown negotiating team should explore with Auckland Council and Auckland Transport a joint governance and risk-sharing model between the Crown and Auckland Council to deliver the City Rail Link project, including reviewing Auckland Transport's existing procurement strategy to ensure it delivers value for money and optimises whole-of-life costs
9. **agree** that the Crown negotiating team should explore with Auckland Council and Auckland Transport establishing a principle of equally shared funding for all passenger related rail upgrades (tracks, signalling and associated infrastructure) on the Auckland rail network in the future
10. **note** that the Crown negotiating team is still developing a recommended position on the following matters and the Associate Minister of Finance and Minister of Transport will report on these in August 2016 when they seek Cabinet approval of the joint business plan:
 - the timing of the Crown funding commitment
 - the issues associated with the existing rail operating model and how this can be addressed through the City Rail Link joint business plan
 - whether and how the Crown funding commitment could be tied to wider priorities around housing
11. **note** that the Associate Minister of Finance and the Minister of Transport may choose to release a conditional statement of funding certainty if they deem it necessary to provide confidence to the construction sector to engage and compete in Auckland Transport's procurement process

Hon Steven Joyce
Associate Minister of Finance

Dated: _____

Hon Simon Bridges
Minister of Transport

Dated: _____



Cabinet Economic Growth and Infrastructure Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Auckland City Rail Link Joint Business Plan

Portfolios **Associate Finance (Hon Steven Joyce) / Transport**

On 6 July 2016, the Cabinet Economic Growth and Infrastructure Committee (EGI):

1 **noted** that on 9 December 2015, EGI:

- 1.1 authorised the Minister of Finance and the Minister of Transport to enter into negotiations with the Auckland Council with a view to bringing forward the City Rail Link business plan and formalising the commitment to provide Crown funding, subject to a range of funding, ownership and risk issues being successfully negotiated and resolved;
- 1.2 noted that a further report will be submitted to EGI in the first half of 2016, with a proposed funding commitment and proposal for next steps following discussions with the Auckland Council;

[EGI-15-MIN-0197]

- 2 **noted** that negotiations are underway with the Auckland Council and Auckland Transport on the City Rail Link joint business plan, and that the paper under EGI-16-SUB-0175 seeks Cabinet's agreement in principle to the emerging Crown negotiation position;
- 3 **noted** that the Associate Minister of Finance (Hon Steven Joyce) and the Minister of Transport (the Ministers) will report back to EGI by the end of August 2016 with a proposed joint business plan that addresses key risks for the Crown, and enables the Crown to formalise its funding commitment for the City Rail Link;
- 4 **noted** that when the Ministers report back by the end of August 2016, Cabinet will be able to consider the final joint business plan in full, and confirm its provisions after the Crown negotiating team has agreed this with Auckland Council and Auckland Transport;
- 5 **agreed in principle** that the current negotiating position be for the Crown to provide 50 percent of the agreed capital costs of the City Rail Link;
- 6 **agreed in principle** that the current negotiating position be that the early works undertaken before agreement on a joint business plan will be included in the final joint business plan, minus any financing costs incurred by Auckland Council;
- 7 **noted** that the estimated funding share for the Crown is \$1.68 billion;

- 8 **agreed in principle** that the current negotiating position be that the wider network improvements needed to realise the full benefits of the City Rail Link are not included in the final joint business plan, unless there is an opportunity to use these as leverage for wider policy concessions;
- 9 **agreed in principle** that the Crown negotiating team should explore with the Auckland Council and Auckland Transport a joint governance and risk-sharing model between the Crown and Auckland Council to deliver the City Rail Link project, including reviewing Auckland Transport's existing procurement strategy to ensure it delivers value for money and optimises whole-of-life costs;
- 10 **agreed** that the Crown negotiating team should explore with the Auckland Council and Auckland Transport establishing a principle of equally shared funding for all passenger related rail upgrades (tracks, signalling and associated infrastructure) on the Auckland rail network in the future;
- 11 **noted** that the Crown negotiating team is still developing a recommended position on the following matters, and that the Ministers will report on these matters in August 2016 when Cabinet approval of the joint business plan is sought:
- 11.1 how the Crown's funding commitment can be used to free up further housing development opportunities adjacent to the City Rail Link and the wider rail network;
 - 11.2 the timing of the Crown's funding commitment;
 - 11.3 the issues associated with the existing rail operating model and how this can be addressed through the City Rail Link joint business plan;
- 12 **noted** that the Ministers may choose to release a conditional statement of funding certainty if they deem it necessary to provide confidence to the construction sector to engage and compete in Auckland Transport's procurement process.

Janine Harvey
Committee Secretary

Hard-copy distribution: (see over)

Present:

Rt Hon John Key
Hon Bill English (Chair)
Hon Gerry Brownlee
Hon Steven Joyce
Hon Paula Bennett
Hon Amy Adams
Hon Simon Bridges
Hon Dr Nick Smith
Hon Judith Collins (part of item)
Hon Michael Woodhouse
Hon Nikki Kaye
Hon Peseta Sam Lotu-liga
Hon Maggie Barry
Hon Craig Foss
Hon Jo Goodhew
Hon Nicky Wagner
Hon Louise Upston (part of item)
Hon Paul Goldsmith
Hon Te Ururoa Flavell

Officials present from:

Office of the Prime Minister
Officials Committee for EGI

Hard-copy distribution:

Cabinet Economic Growth and Infrastructure Committee
Office of the Prime Minister
Melleny Black, PAG, DPMC

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Cabinet Economic Growth and Infrastructure Committee

Summary

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Auckland City Rail Link Joint Business Plan

Portfolios Associate Finance (Hon Steven Joyce) / Transport

Purpose This paper seeks agreement in principle to the emerging Crown negotiating position for discussion with the Auckland Council on the Auckland City Rail Link (CRL) joint business plan.

Previous Consideration On 9 December 2015, EGI authorised Ministers to enter into negotiations with the Auckland Council with a view to bringing forward the joint business plan (originally intended for 2017) and formalising the government's commitment to provide funding for the CRL [EGI-15-MIN-0197].

Summary Simon Allen and Geoff Dangerfield, who are leading the negotiations for the Crown, have held a number of informal meetings with the Chief Executives of Auckland Council and Auckland Transport on the CRL joint business plan. These meetings have been positive and have established broad alignment in thinking around project risks and how these may be jointly addressed.

The table in paragraph 34 provides a summary of progress against the agreed Cabinet mandate for the negotiations.

Agreement in principle is sought to the emerging Crown negotiation position, as summarised in paragraphs 4-7 of the paper.

Regulatory Impact Analysis Not required.

Baseline Implications None from this paper.

Legislative Implications None from this paper.

Timing Issues Negotiations are expected to be finalised before the end of August 2016.

The Associate Minister of Finance and the Minister of Transport will report back to EGI at that time with a full funding commitment proposal.

Announcement None – any public statements could weaken the Crown's position.

At a later stage, Ministers may choose to release a conditional statement of funding certainty if it becomes apparent that the construction sector needs this to engage and compete in the procurement process.

Proactive Release

None.

Consultation

Paper prepared by Transport and Treasury. DPMC was informed.

The Associate Minister of Finance and the Minister of Transport indicate that the Minister of Finance was consulted, and that discussion is not required with the government caucus, or with other parties represented in Parliament.

The Associate Minister of Finance (Hon Steven Joyce) and the Minister of Transport recommend that the Committee:

- 1 note that on 9 December 2015, the Cabinet Economic Growth and Infrastructure Committee (EGI):
 - 1.1 authorised the Minister of Finance and the Minister of Transport to enter into negotiations with the Auckland Council with a view to bringing forward the City Rail Link business plan and formalising the commitment to provide Crown funding, subject to a range of funding, ownership and risk issues being successfully negotiated and resolved;
 - 1.2 noted that a further report will be submitted to EGI in the first half of 2016, with a proposed funding commitment and proposal for next steps following discussions with the Auckland Council;

[EGI-15-MIN-0197]
- 2 note that negotiations are underway with the Auckland Council and Auckland Transport on the City Rail Link joint business plan, and that the paper under EGI-16-SUB-0175 seeks Cabinet's agreement in principle to the emerging Crown negotiation position;
- 3 note that the Associate Minister of Finance (Hon Steven Joyce) and the Minister of Transport (the Ministers) will report back to EGI by the end of August 2016 with a proposed joint business plan that addresses key risks for the Crown, and enables the Crown to formalise its funding commitment for the City Rail Link;
- 4 note that when the Ministers report back by the end of August 2016, Cabinet will be able to consider the final joint business plan in full, and confirm its provisions after the Crown negotiating team has agreed this with Auckland Council and Auckland Transport;
- 5 agree in principle that the current negotiating position be for the Crown to provide 50 percent of the agreed capital costs of the City Rail Link;
- 6 agree in principle that the current negotiating position be that the early works undertaken before agreement on a joint business plan will be included in the final joint business plan, minus any financing costs incurred by Auckland Council;

- 7 note that the estimated funding share for the Crown is \$1.68 billion;
- 8 agree in principle that the current negotiating position be that the wider network improvements needed to realise the full benefits of the City Rail Link are not included in the final joint business plan, unless there is an opportunity to use these as leverage for wider policy concessions;
- 9 agree in principle that the Crown negotiating team should explore with the Auckland Council and Auckland Transport a joint governance and risk-sharing model between the Crown and Auckland Council to deliver the City Rail Link project, including reviewing Auckland Transport's existing procurement strategy to ensure it delivers value for money and optimises whole-of-life costs;
- 10 agree that the Crown negotiating team should explore with the Auckland Council and Auckland Transport establishing a principle of equally shared funding for all passenger related rail upgrades (tracks, signalling and associated infrastructure) on the Auckland rail network in the future;
- 11 note that the Crown negotiating team is still developing a recommended position on the following matters, and that the Ministers will report on these matters in August 2016 when Cabinet approval of the joint business plan is sought:
- 11.1 how the Crown's funding commitment can be used to free up further housing development opportunities adjacent to the City Rail Link and the wider rail network;
 - 11.2 the timing of the Crown's funding commitment;
 - 11.3 the issues associated with the existing rail operating model and how this can be addressed through the City Rail Link joint business plan;
- 12 note that the Ministers may choose to release a conditional statement of funding certainty if they deem it necessary to provide confidence to the construction sector to engage and compete in Auckland Transport's procurement process.

Janine Harvey
Committee Secretary

Hard-copy distribution:

Cabinet Economic Growth and Infrastructure Committee
Office of the Prime Minister
Deputy Chief Executive, Policy, DPMC
Melleny Black, PAG, DPMC

Chair
Cabinet Economic Growth and Infrastructure Committee

CROWN IN-PRINCIPLE FUNDING COMMITMENT FOR THE AUCKLAND CITY RAIL LINK PROJECT

Proposal

1. This paper seeks:
 - 1.1. approval of our proposed terms and conditions for the Crown's in-principle funding commitment to the Auckland City Rail Link (CRL) project in the form of a Heads of Agreement; and
 - 1.2. delegation for the Minister of Finance, Associate Minister of Finance and Minister of Transport to approve the documentation that brings the funding commitment and associated terms and conditions into effect, provided there are no material differences to what Cabinet approves.

Executive summary

2. In December 2015, Cabinet approved a proposal for the Minister of Finance and the Minister of Transport to enter negotiations with Auckland Council with a view to bringing forward the joint business plan and formalising the Government's commitment to provide funding for the CRL [EGI-15-MIN-0197 refers]. On 6 July 2016, we provided an interim report on progress and sought agreement in-principle to an emerging Crown negotiating position [EGI-16-MIN-0175 refers].
3. We have interpreted a joint business plan to mean agreement on certain principles governing the delivery of the CRL and a process for setting up the agreed governance structure for the project. As such, we recommend that the Crown and Auckland Council agree to a Heads of Agreement that provides these commitments from both parties in a binding contract.
4. A Sponsors' Agreement will be agreed subsequently between both the Crown and Auckland Council that sets out detailed conditions for how both Sponsors will work together in relation to the CRL and other wider policy objectives.
5. Crown officials and Auckland Council officers have reached alignment on the terms of the Heads of Agreement as outlined in this paper for Ministers and Councillors to approve.

Size, scope and timing of Crown funding

6. The Heads of Agreement sets out an in-principle commitment of Crown funding to 50 percent of an agreed target cost for the CRL to be specified in the Sponsors' Agreement, subject to a number of conditions documented in the Heads of Agreement.

7. We propose that the Crown's funding share should commence from the time the Sponsors' Agreement is signed and will include all construction and services undertaken in relation to the CRL (amounting to between \$1.55 and \$1.69 billion), minus any financing costs incurred by Auckland Council up until 30 June 2016.

Governance and risk sharing

8. The principles in the Heads of Agreement reflect what we consider to be best practice project governance. The intention of both Sponsors is to set up an independent delivery vehicle for the CRL (CRL Limited), ensuring that it is provided sufficient powers and autonomy to deliver the project against a set of parameters to be agreed by the Sponsors.
9. We consider that by appointing relevant and independent expertise to oversee delivery of the CRL and requiring sponsor approval of major decisions, the proposed governance structure provides the Crown with the best approach to managing key project risks and ensuring value-for-money for its investment.
10. We estimate the cost of setting up and servicing CRL Limited will be around \$2-5 million per annum, though this is subject to change once costs are more fully understood as the Sponsors' Agreement is negotiated.

Wider policy objectives

11. The Heads of Agreement sets out a commitment from both the Crown and Auckland Council to working through several wider policy objectives, including:
 - 11.1. Optimising the wider benefits of the CRL, including value capture in relation to commercial developments and housing development opportunities enabled by the project across the Auckland rail network
 - 11.2. A review of the existing rail planning, funding and operating model, with a view to sharing of costs between the Crown and Auckland Council for rail track and associated infrastructure
 - 11.3. Agreeing the ownership arrangements for the CRL
 - 11.4. Considering how planning for any future projects for investment in the Auckland rail network may optimise benefits for Auckland including value uplift from commercial developments and housing development potential.

Next steps

12. After Crown and Auckland Council have signed the Heads of Agreement, both parties will need to work together to maintain progress on the project, formalise the funding commitment, bring the agreed project governance and delivery arrangements into effect and commence the set-up of CRL Limited. It is likely to take up to 12 months to complete these processes before CRL Limited is established and in a position to assume responsibility for the project.

Cabinet mandate for negotiations with Auckland Council

13. In December 2015, Cabinet authorised the Minister of Finance and the Minister of Transport to enter negotiations with Auckland Council with a view to bringing forward the joint business plan and formalising the Government's commitment to provide funding for the CRL [EGI-15-MIN-0197 refers]. The Prime Minister announced this decision in January 2016.
14. Cabinet also agreed in December that the negotiations should address the following parameters:
 - 14.1. any conditions to reflect the timing for when Government funding will become available, based on progress against the expected project timeframe
 - 14.2. the Government and Auckland Council's shares of funding, and that the Government's share of funding will not exceed 50 per cent of the capital costs of the project and will not include any financing costs which Auckland Council may incur from commencing the main works in 2018
 - 14.3. treatment of early construction costs incurred prior to a funding agreement (or joint business plan)
 - 14.4. treatment of any costs needed to provide for additional wider network improvements to fully deliver the benefits of the CRL
 - 14.5. how the CRL's whole-of-life costs can be minimised
 - 14.6. governance and project management arrangements for the CRL to ensure it is delivered to time, scope and cost parameters
 - 14.7. the ownership arrangements for the CRL asset once completed
 - 14.8. opportunities to part-fund the CRL through third-party funding
 - 14.9. any other risks or issues identified during the negotiations.
15. On 6 July 2016, we provided an interim report on progress and sought agreement in-principle to an emerging Crown negotiating position [EGI-16-MIN-0175 refers]. Cabinet noted that the Associate Minister of Finance and the Minister of Transport would report back by the end of August 2016 with a proposed joint business plan that addresses key risks for the Crown and enables it to formalise its funding commitment for the CRL.

Development of a Heads of Agreement

16. Given the substantial work that has already gone in to scope, plan and set up the CRL, we have interpreted a joint business plan to mean agreement on certain principles governing the delivery of the CRL and a process for setting up the agreed governance structure for the project. As such, we recommend that the Crown and Auckland Council agree to a Heads of Agreement that provides these commitments from both parties.

17. A Heads of Agreement would be a binding contract that contains an in-principle commitment on the part of the Crown to fund the CRL on an equal basis with Auckland Council. However, this in-principle funding commitment is subject to a number of conditions including Auckland Council's agreement to an agreed process (as documented in the Heads of Agreement) and a number of policy principles intended to guide the actions of the two Sponsors going forward. The Crown's in-principle funding commitment is also subject to agreement with Auckland Council on (among other things) a Sponsors' Agreement which will set out detailed conditions for the CRL "partnership" on terms satisfactory to the Crown. Details of the kind of provisions to be contained in the Sponsors Agreement are set out in paragraph 46 below.
18. Crown officials and Auckland Council officers have reached alignment on the terms of the Heads of Agreement as outlined in this paper for Ministers and Councillors to approve.
19. The rest of this paper discusses the elements that will be reflected in the Heads of Agreement and supporting documents to be drafted and agreed subsequently. It has been structured against the three broad areas of negotiation with Auckland Council that broadly aligns with Cabinet's mandate described above. These are:
 - 19.1. the size, scope and timing of the Crown's funding share
 - 19.2. project governance and delivery
 - 19.3. wider policy objectives.

Size, scope and timing of the Crown's funding share

20. The Crown's funding share will be determined based on how it defines the scope of the CRL and the proportion of costs that it is willing to fund.
21. Since our last report back to Cabinet, we have confirmed the emerging Crown position with Auckland Council that the Crown will provide 50 per cent of project costs for the CRL (with target cost and funding framework for overruns to be agreed in the Sponsors' Agreement).
22. We have also confirmed that the Crown's funding commitment will include early construction works committed before agreement on a joint business plan. These are the works Auckland Transport is currently undertaking to move a stormwater pipe in Albert Street and to build cut and cover tunnels under the same street between Britomart and Wyndham Street where the main bored tunnel will start. Given these works are essential to deliver the CRL, we have taken the position that the Crown's funding should cover these works.

23. However, to reflect the principle that the Crown should not bear unreasonable risks on contracts entered into prior to its involvement in the CRL, the Heads of Agreement sets out that the Crown's funding for the early works will be on the basis of 50 percent of the initial committed contract price for the early works contracts, plus such additional amounts contractually payable to the early works contractors that the Crown considers to be reasonable. The Crown will not contribute to any financing costs incurred by Auckland Council up to 30 June 2016 or to any amounts payable due to fault on the part of Auckland Council or Auckland Transport. The amount budgeted by Auckland Council for these early works (including contingency) is between \$350 and \$370 million. The approach to financing costs after 30 June 2016 is discussed in paragraph 32.
24. The Crown's funding commitment also includes the main construction works of the project, which comprise the main bored tunnel, linewide and track systems, new stations at Aotea and Karangahape, upgrades at Britomart, Otanuhu, Henderson, Newmarket and the Strand (around \$3 billion).
25. As previously noted by Cabinet, the Crown's funding share for the CRL is around \$1.69 billion (a 50 percent share of around \$3.37 billion). This figure is significantly higher than the publicly quoted estimate of around \$2.5 billion as it accounts for P90 contingency¹, inflation and additional costs identified upon completion of a more detailed design by Auckland Transport and estimates by its quantity surveyors. A P50 figure for the total project costs, as is commonly used for projects of this nature, is approximately \$3.1 billion.

Out of Scope

¹ i.e. the estimate assumes a 90 per cent probability that this cost will not be exceeded

Out of Scope

Timing

30. Cabinet previously noted that the Crown negotiating team would develop a recommended position on the timing of the Crown's funding commitment.
31. Although the Crown is committing to fund 50 percent of the project, the Heads of Agreement proposes that the Crown's obligation to make payments (including in respect of retrospective works) commences once the Sponsors' Agreement comes into effect, (which is likely to be at the end of this year or early 2017), rather than the previously indicated funding start-date of 2020. This reflects the Government's commitment to part-fund works on the CRL that have already commenced, as well as the responsibilities accompanying the Crown's joint governance role.
32. As the Crown's funding will not be formalised until the Sponsors' Agreement is agreed and comes in to effect, Auckland Council will incur additional financing costs in the interim to ensure the project can continue. We consider it important to share half of these costs in recognition of the nature of the partnership with Auckland Council to deliver the project. The Heads of Agreement sets out that the Crown will provide its half share of the financing costs incurred by Auckland Council from 30 June 2016 as this is the start of the financial year in which the Sponsors' Agreement is expected to come into effect.

Impact on the Crown Accounts

33. Assuming that the Crown will pay half the total cost of the CRL, we expect that the costs will fall as follows:

Table 1 – Breakdown of likely CRL costs

	P50	P90
2016/17	\$198 million	\$215 million
2017/18	\$80 million	\$86 million
2018/19	\$288 million	\$313 million
2019/20	\$365 million	\$396 million
2020/21	\$342 million	\$371 million
2021 – 2024	\$287 million	\$312 million
Total	\$1,559 million	\$1,693 million

34.

s 9(2)(b)(ii)

However, any net debt impacts of commencing payment of the Crown's funding share before 2020 are not likely to be significant over the medium-term. Net debt remains forecast to reach 20 percent of GDP by 2020/21.

35.

s 9(2)(b)(ii)

Project governance and delivery

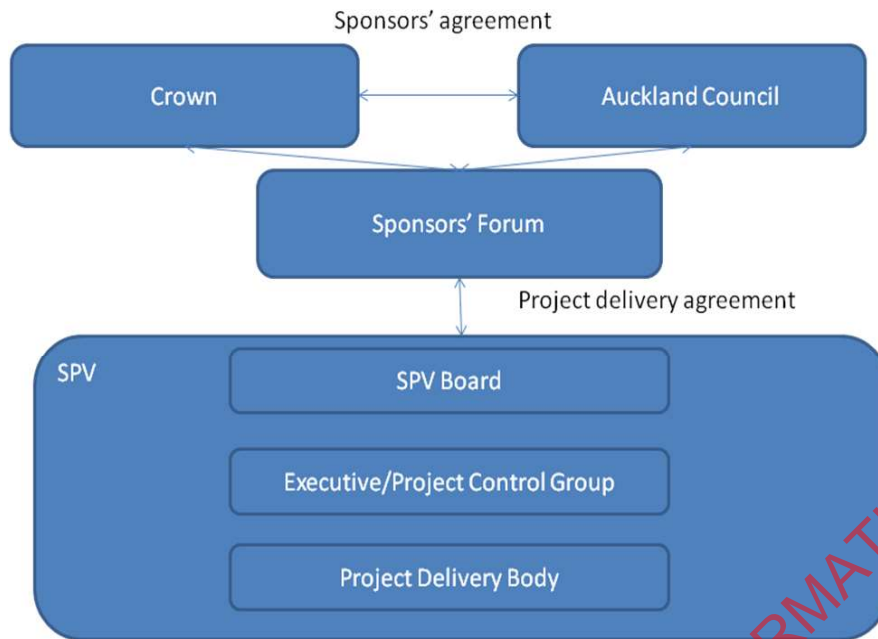
36. At our last discussion on the CRL, we recommended a more explicit joint governance role for the Government as this would provide us with a direct and proactive role in managing risks and making decisions on how the project will be delivered, including scope changes and potential cost overruns.
37. Cabinet agreed in-principle that the Crown negotiating team should explore with Auckland Council and Auckland Transport a joint governance and risk-sharing model between the Crown and Auckland Council accordingly.
38. It is proposed that this is achieved by setting up an independent Special Purpose Vehicle (SPV) that delivers the project and reports to both the Crown and Auckland Council as joint Sponsors.
39. It is likely to take up to 12 months to agree a Sponsors' Agreement, Project Delivery Agreement and set up an SPV to deliver the project. Hence we are proposing to include agreed principles and process in the Heads of Agreement to reflect the Crown and Auckland Council's intentions over this period and once the SPV is in place.

Governance and risk-sharing principles

40. The principles in the Heads of Agreement reflect what we consider to be best practice project governance. The intention of both Sponsors is to set up an independent delivery vehicle for the CRL, ensuring that CRL Limited is provided sufficient powers and autonomy to deliver the project against a set of parameters to be agreed by the Sponsors.
41. The Heads of Agreement includes the following principles that will underpin the governance arrangements for the CRL:
- 41.1. An SPV will be established to deliver the CRL (referred to as CRL Limited for the purpose of the Heads of Agreement).
 - 41.2. CRL Limited will report to a Sponsors' Forum on project progress and seek decisions on key specified matters. We are working with officials to decide who should represent the Crown on the Sponsors' Forum and we may come back to Cabinet to confirm representatives.

- 41.3. The Sponsors will approve major decisions by agreement, including those relating to scope and funding, with appropriate deadlock and dispute resolution provisions in the event that agreement cannot be reached.
- 41.4. CRL Limited will be listed in Schedule 4A of the Public Finance Act 1989 and have a board of independent directors jointly appointed by the Sponsors based on an agreed set of competencies.
- 41.5. The Crown will hold a 51 per cent shareholding in CRL Limited for the purpose of establishing the company as a majority Crown controlled entity. While the Crown would hold 51 per cent shareholding, the contractual and constitutional arrangements can set out how both Sponsors will fund and make decisions on a 50-50 basis.
- 41.6. CRL Limited will be responsible for delivery of the project. Auckland Transport will be engaged by CRL Limited for ongoing provision of technical and operational services and integrated project delivery. This reflects the significant amount of work undertaken to date by Auckland Transport and the need to leverage the knowledge and expertise within the organisation to support the delivery of the CRL. However, Auckland Transport will be contractually accountable to CRL Limited for the provision of the services. CRL Limited will be responsible to its shareholder Sponsors, including the Crown, under this new arrangement.
- 41.7. KiwiRail will be engaged by CRL Limited for ongoing provisions of technical and operational services in relation to the interface of the project with the wider rail network and rail services.
- 41.8. The Sponsors will harmonise and synchronise media statements in relation to the project, and branding should reflect the role of the Crown and Auckland Council as project Sponsors.
42. Officials explored a number of options for the structure of CRL Limited, including a Schedule 4A company under the Public Finance Act, a joint venture contractual arrangement, and a Council Controlled Organisation. Crown officials and Auckland Council officers favour a Schedule 4A company as this would avoid triggering special consultation requirements to establish a Council Controlled Organisation. The CRL project has been consulted on through Auckland Council and Auckland Transport processes. This approach would also be similar to that adopted in setting up the Tamaki Redevelopment Company and therefore provides a useful and familiar approach comfortable for both Sponsors.
43. The proposed governance structure is set out in Figure 1 below.

Figure 1 – Proposed governance for the CRL



44. We consider that by appointing relevant and independent expertise to oversee delivery of the CRL and requiring Sponsor approval of major decisions, the proposed governance structure provides the Crown's best approach to managing key project risks and ensuring value-for-money for its investment.

Pathway for setting up joint governance and CRL Limited

45. The Heads of Agreement also sets out the pathway for both Sponsors to set up CRL Limited and its overarching governance controls and identifies a number of key documents needed to achieve this.
46. A Sponsors' Agreement will be needed to formalise both Sponsors' commitment, on a joint and equal basis, to fund and partner on the delivery of the project, and how the Sponsors will work together on wider policy objectives. This will supersede the Heads of Agreement and will need to be agreed between both Sponsors. The Sponsors' Agreement will set out, inter alia:
- 46.1. Sponsor roles and obligations
 - 46.2. the exercise of Sponsor rights and powers (including Sponsor directed variations)
 - 46.3. the process and key principles of the Project Delivery Agreement
 - 46.4. governance of the project
 - 46.5. relationships with Auckland Transport, KiwiRail and key stakeholders
 - 46.6. accounting for project assets and contributions
 - 46.7. receipt of reports and rights of audit

- 46.8. review points and key approval and decision-making rights (including deadlock and dispute resolution mechanisms)
- 46.9. definition of Sponsor default and the consequence of the same
- 46.10. step in rights of the Sponsors to CRL Limited.
- 47. A Project Delivery Agreement will need to be agreed between the Sponsors and CRL Limited, to set out the parameters and requirements for CRL Limited to deliver the project and the relationship with the Sponsors. The Project Delivery Agreement will need to include:
 - 47.1. what the Sponsors require from CRL Limited in project delivery
 - 47.2. the Sponsors' funding commitments in line with an agreed forecast funding schedule.
 - 47.3. the arrangements to be entered into with key stakeholders and with KiwiRail and Auckland Transport.

Governance arrangements while CRL Limited is being established

- 48. At present, the CRL project team reports through a hierarchy within Auckland Transport consisting of, in increasing order of importance, the Project Director, Auckland Transport's Chief Executive and the Auckland Transport Board.
- 49. A Project Control Group operates under a delegated authority from the Auckland Transport Board to ensure the project is delivered to time, budget and quality parameters.
- 50. The Heads of Agreement sets out that Auckland Transport will continue to carry out project delivery and associated services until CRL Limited is established, but will carry out such services in close consultation with, and taking into account the views of, the Sponsors. Auckland Transport will be required to escalate significant issues for resolution to the Sponsors and senior management of Auckland Transport. Auckland Transport is also required to seek the Sponsors' approval before going to market or entering into any other material contract or binding arrangement in relation to the project.
- 51. The Heads of Agreement sets out that the Sponsors will determine the role, responsibilities and composition of the Project Control Group. Soon after the Heads of Agreement is finalised, we will work with Auckland Council to decide who we wish to appoint to the Project Control Group, and the role it will have while CRL Limited is being established.
- 52. We consider that these arrangements will provide the Crown with sufficient control on key decisions as CRL Limited is being set up while enabling the project to continue without unreasonable delays.

Review of procurement strategy

53. Given the time needed to set up CRL Limited, we do not consider it practical or desirable to delay the project until it is in place. This will require the Crown and Auckland Council to work closely to approve key decisions prior to the set up of CRL Limited. A critical decision for both Sponsors is to approve the project procurement strategy before commencing tender processes for the main construction contracts.
54. Treasury's Gateway Unit has worked with Auckland Transport to set up a New Zealand Government 'Gateway Review' that assesses the procurement and delivery strategy for the CRL. Gateway is an independent and confidential peer review process that examines projects at key points in their lifecycles to assess their progress and provide recommendations to improve the likelihood of successful delivery. The Gateway process is mandatory for high risk capital projects run by Government departments, which includes the CRL now that Crown funding is involved.
55. The Heads of Agreement requires that the Sponsors and Auckland Transport shall take into account the outcomes and recommendations of the review to the satisfaction of both Sponsors, prior to release of any tender documentation.
56. We are confident that this meets Cabinet's mandate that the funding negotiations should cover how the CRL's whole-of-life costs can be minimised. It also responds to Cabinet's subsequent agreement that the Crown negotiating team should initiate a review of Auckland Transport's existing procurement strategy to ensure it delivers value-for-money and optimises whole-of-life costs.

Costs associated with the proposed governance structure

57. We estimate the cost of setting up and servicing CRL Limited will be around \$2-5 million per annum over 7 to 8 years, though this is subject to change once costs are more fully understood as the Sponsors' Agreement is negotiated.

Wider policy objectives

58. In addition to the governance of the CRL, Cabinet discussed wider policy objectives on which we would initiate further work and report back with a recommended position. Some of these matters will require continued engagement with Auckland Council and Auckland Transport following signing of the Heads of Agreement.

Out of Scope

Out of Scope



Ownership

65. Cabinet's mandate set out that the negotiations should cover the ownership arrangements for the CRL asset once completed. While not a wider policy objective, this is intrinsically linked to the optimal rail operating model for the Auckland rail network. The final ownership arrangements for the CRL should reflect the way rail services are operated in Auckland.
66. The Heads of Agreement sets out a pathway for exploring first the issue of the operating model for Auckland's rail network (as discussed above), which will inform the eventual ownership of the completed CRL asset.
67. While the CRL is being built, the ownership of the assets will be vested in CRL Limited.

68. The onus will be on the Sponsors to agree appropriate arrangements before completion of the project, as without an agreement on this matter, CRL Limited will carry on owning the assets in perpetuity. This is unlikely to represent a desirable outcome as CRL Limited would need to negotiate complex contracts and interoperability arrangements with KiwiRail, Auckland Transport and the service provider (currently Transdev) to operate the respective assets.
69. We intend to set out further clarity on the ownership arrangements in the Sponsors' Agreement, which will be when the Government commits its funding.

Links to housing

70. Cabinet previously noted that the Crown negotiating team would develop a recommended position on how the Crown's funding commitment could be used to free up further housing development opportunities adjacent to the CRL and the wider rail network.
71. As you are aware, Auckland Council recently passed the Auckland Unitary Plan, adopting most of the Independent Hearings Panel (the Panel) recommendations. One of these recommendations was to "focus urban growth on centres, transport nodes and corridors to achieve a quality compact form". The Unitary Plan as notified by Auckland Council already provided for intensification along rail corridors to the West and South. The Unitary Plan as passed provided for further residential capacity in some areas closer to the city centre such as Mount Albert, and to a lesser extent Kingsland and Parnell. Areas such as Meadowbank and Remuera have not received further residential capacity as they contain a number of special character areas.
72. Ministry of Business, Innovation and Employment officials have advised us that the Panel recommendations largely provide for further housing development opportunities adjacent to the CRL and wider rail network.
73. Following discussion with Auckland Council we consider that the Sponsors' Agreement could provide for a shared objective between the Crown and Auckland Council for housing along the rail corridor.
74. As discussed above in paragraph 29, the Heads of Agreement also signals that future investment in the rail network will need to be targeted not only on public transport outcomes but also on value uplift and housing outcomes.

Opportunities for third party funding

75. Cabinet's original mandate set out that the negotiations should cover opportunities to part-fund the CRL through third-party funding.
76. Officials investigated the opportunities for funding to be captured from third-party sources primarily through existing rates on CBD businesses and residents and value creation around the new stations.

77. There appear to be more promising opportunities for value creation around the new stations, particularly by seeking to create more transit-oriented development. The Heads of Agreement includes a commitment from both the Crown and Auckland Council to optimise the wider benefits of the project, including value capture in relation to commercial developments (and housing opportunities) across the wider Auckland rail network.
78. We anticipate that CRL Limited will be tasked with considering value creation and capture across the whole rail network. CRL Limited will not be tasked with delivering on this however so as not to create conflict with its primary objective of delivering the CRL. A separate entity may be needed in the future to deliver on the Sponsors' value capture objective.
79. On the possibility of exploring third-party funding, officials have advised us that the opportunities for this are limited given the time needed to engage with potential third-party funders and the advanced stage at which the CRL is currently. As a comparison, on the Crossrail project in London, local authorities were able to leverage funding from the local business community by securing buy-in and involvement early on in the planning for the project. We will encourage officials to engage with Auckland Council on opportunities to leverage third-party funding for future investments in Auckland.

Next steps

80. Auckland Council is convening an extraordinary meeting of its governing body to take decisions on the CRL Heads of Agreement on Wednesday 14 September 2016.
81. We expect that the Heads of Agreement can be signed following the Auckland Council governing body meeting.
82. After Cabinet and Auckland Council have signed the Heads of Agreement, both parties will need to work together to maintain progress on the project, formalise the funding commitment, bring the agreed project governance and delivery arrangements into effect and commence the set-up of CRL Limited. This includes workstreams to:
 - 82.1. draft and agree a Sponsors' Agreement
 - 82.2. establish the Sponsors' Forum
 - 82.3. draft and agree a Project Delivery Agreement
 - 82.4. review the outcomes of the Gateway review and provide recommendations to the Sponsors' Forum
 - 82.5. establish the SPV as a schedule 4A company under the Public Finance Act and appoint members to the company's board (note some prospective board members may be contracted earlier to support the Sponsors to make decisions related to procurement and project delivery)
 - 82.6. review existing strategy for value creation around the stations

82.7. review the existing operating model and provide recommendations, including implications for ownership and future funding arrangements.

83. The potential timing for key actions between now and set-up of CRL Limited is provided below.

Table 2 – Potential timetable for CRL

Key actions	Anticipated timetable
Heads of Agreement	September 2016
Process for appointment of CRL Limited Chair and Board	2016 – 2017
Sponsors' Agreement	2016 – 2017
Major contracts tendered	2017
Project Delivery Agreement	2017
CRL Limited established	2017

Delegation

84. We recommend that Cabinet authorise the Minister of Finance and the Minister of Transport to sign the Heads of Agreement on behalf of the Crown.
85. Given the detailed work needed to bring the agreed governance arrangements for the CRL into effect, we are recommending that Cabinet authorise the Minister of Finance, Associate Minister of Finance and the Minister of Transport to negotiate the final details of the Sponsors' Agreement, Project Delivery Agreement and any other supporting legal documentation that may be necessary.
86. We will report back to Cabinet on completion of these agreements or earlier, if there are significant risks or changes to the agreed Crown position.
87. We will also seek decisions from Cabinet in relation to the following matters:
- 87.1. Confirming nominees for the CRL Limited Board appointments in September 2016.
- 87.2. Confirming the Crown's funding share and key principles underpinning the commitment as set out in the Sponsors' Agreement.
- 87.3. Establishing CRL Limited as a Schedule 4A company under the Public Finance Act in mid-2017.

Consultation

88. Consultation with other agencies was not necessary in the development of this paper. The negotiating team has been working with the Ministry of Business, Innovation and Employment, New Zealand Transport Agency and KiwiRail on the matters covered in this paper. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

89. It is likely that, by signing the Heads of Agreement, the funding of the CRL becomes “more likely than not” and therefore would be included in the fiscal forecasts for the upcoming Half Year Economic and Fiscal Update.

In signing the Heads of Agreement, the Government will signal its willingness to commence payment of the Crown funding share once the Sponsors’ Agreement comes into effect, rather than in 2020 as previously indicated. s 9(2)(g)(i)

90. There are no financial commitments arising from this paper and the signing of the Heads of Agreement; the Crown’s funding commitment will only be formalised once the Sponsors’ Agreement has been agreed and signed.

Human rights, gender, disability, legislative implications and Regulatory Impact Analysis

91. There are no human rights, gender, disability, or legislative implications arising from this paper. A Regulatory Impact Analysis is not required.

Publicity

92. We will work with the Mayor of Auckland on any possible public announcement around the Heads of Agreement.

Recommendations

93. The Associate Minister of Finance and the Minister of Transport jointly recommend that the Committee:

Context

1. **note** that on 9 December 2015, EGI authorised the Minister of Finance and the Minister of Transport to enter into negotiations with Auckland Council with a view to formalising the commitment to provide Crown funding, subject to a range of funding, ownership and risk issues being successfully negotiated and resolved
2. **note** that on 6 July 2016, EGI agreed in principle that :
 - the Crown would provide 50 percent of the agreed capital costs of the City Rail Link;
 - the early works undertaken prior to a formal commitment of funding from the Crown will be included in the Crown’s funding, minus any financing costs incurred by Auckland Council; and

- the wider network improvements needed to realise the full benefits of the City Rail Link are not included in the Crown's funding, unless there is an opportunity to use these as leverage for wider policy concessions

Agreeing a Heads of Agreement

3. **agree** that the Crown provide an in-principle funding commitment for 50 per cent of the project costs of the City Rail Link through a Heads of Agreement with Auckland Council that sets out a number of conditions that commitment is subject to including Auckland Council's agreement to an agreed process and a number of policy principles intended to guide the actions of the two Sponsors going forward
4. **note** that the Heads of Agreement will be drafted to reflect the Crown position agreed through this paper
5. **note** that Crown officials and Auckland Council officers have reached alignment on the concept and terms of a Heads of Agreement as outlined in this paper for Ministers and Councillors to approve
6. **note** that a more detailed Sponsors' Agreement will be required subsequent to the Heads of Agreement to give effect to the terms specified in the latter and formalise the respective funding shares of both parties

Scope and size of the Crown's funding commitment

7. **agree** that the Crown will provide 50 percent of project costs for the City Rail Link project, with a funding framework to be specified in the Sponsors' Agreement
8. **agree** that for the early construction works committed prior to the finalisation of the Crown's funding commitment, the Crown provide 50 percent of the initial committed contract price for the early works contracts plus such additional amounts contractually payable to the early works contractors that the Crown considers to be reasonable, as these contracts were agreed without Crown involvement
9. **agree** that the Crown's funding share will include the costs and risks associated with the main bored tunnel, stations at Aotea and Karangahape and upgrades at Britomart, Otahuhu, Henderson, Newmarket and the Strand
10. **agree** that the Crown's funding share will not include the cost of wider network improvements needed to realise the full benefits of the City Rail Link, such as resilience upgrades and a third main line between Wiri and Westfield, and costs that will be required as a result of the City Rail Link, such as new rolling stock and level crossings

11. **note** that the estimated funding share for the Crown for the City Rail Link project is up to \$1.69 billion, accounting for P90 contingency that assumes a 90 per cent probability that this cost will not be exceeded, inflation and additional costs identified upon completion of a more detailed design by Auckland Transport

Timing of the Crown's funding commitment

12. **agree** that the Crown will provide its funding for the City Rail Link from the date on which the Sponsors' Agreement comes into effect
13. **note** that Auckland Council will incur additional financing costs in the interim to ensure the project can continue
14. **agree** that the Crown will pay for 50 per cent of the financing costs incurred by Auckland Council between 1 July 2016 and the date the Sponsors' Agreement comes into effect, subject to the Sponsors' Agreement being agreed and signed

Project governance and delivery

15. **agree** that the risks for the Crown in funding the City Rail Link are best managed through establishing joint governance arrangements between the Crown and Auckland Council as co-sponsors
16. **agree** that the Crown's governance principles for delivering the City Rail Link are:
- Establish a new company to deliver the City Rail Link (referred to as City Rail Link Limited for the purpose of the Heads of Agreement);
 - City Rail Link Limited will report to a Sponsors' Forum on project progress and to seek decisions on key specified matters;
 - Sponsors will approve major decisions by agreement, including those relating to scope and funding;
 - City Rail Link Limited will be listed in Schedule 4A of the Public Finance Act 1989 and have a board of independent directors jointly appointed by the Sponsors based on a set of agreed competencies;
 - The Crown will hold a 51 per cent shareholding in City Rail Link Limited for the purpose of establishing the company as a majority Crown controlled entity but contractual arrangements will set out equal decision-making rights for both Sponsors;
 - Auckland Transport will be engaged by City Rail Link Limited for ongoing provision of technical and operational services and integrated project delivery;

- KiwiRail will be engaged by City Rail Link Limited for ongoing provisions of technical and operational services in relation to the interface of the project with the wider rail network and rail services; and
 - The Sponsors will harmonise and synchronise media statements in relation to the project, and branding should reflect the role of the Crown and Auckland Council as project Sponsors.
17. **agree** that the Crown and Auckland Council will need to agree a Sponsors Agreement that sets out the Sponsors' commitment, on a joint and equal basis, to fund and partner on the delivery of the project, and how the Sponsors will work together on wider objectives
18. **agree** that the Crown and Auckland Council will need to agree a Project Delivery Agreement that sets out what the Sponsors require from City Rail Link Limited as well as confirming the Sponsors' funding commitments in line with an agreed forecast funding schedule
19. **note** that there may be other legal documentation required to bring the joint governance and risk-sharing arrangements into effect
20. **agree** that while the Sponsors' Agreement is being developed and until City Rail Link Limited is established, Auckland Transport will continue to carry out project delivery and associated services, but will carry out such services in close consultation with, and taking into account the views of, the Sponsors and will escalate significant issues for resolution to the Sponsors and senior management of Auckland Transport
21. **agree** that Auckland Transport must seek the Sponsors' approval before taking decisions on procurement or entering into any other material contract or binding arrangement in relation to the project
22. **agree** that the Crown and Auckland Council will determine the role, responsibilities and composition of the existing Project Control Group, which operates under a delegated authority from the Auckland Transport Board, while City Rail Link Limited is being established

Review of project procurement strategy

23. **note** that a Gateway review of the existing procurement strategy has been initiated to ensure the procurement strategy delivers value-for-money and optimises whole-of-life costs
24. **agree** that the results of the Gateway review will be used to inform the final procurement strategy prior to seeking expressions of interest in the first construction contract for the main works

Wider policy objectives

25. **agree** that the Crown and Auckland Council explore the opportunity enabled by the City Rail Link for value creation around the new stations, particularly by seeking to create more transit-oriented development
26. **agree** that the Crown and Auckland Council commit to optimising the wider benefits of the City Rail Link in relation to the housing development opportunities enabled by the City Rail Link across the Auckland rail network

Out of Scope

28. **agree** that the Crown and Auckland Council will need to agree arrangements for determining the ultimate ownership and operation of the City Rail Link in the Sponsors' Agreement, which will need to be informed by the broader rail network operating model given the close links across these issues
29. **agree** that the Crown and Auckland Council commit to considering how any future projects for investment in the Auckland rail network may maximise benefits for Auckland of Crown investment including value uplift from commercial developments and housing development potential

Further work following Cabinet decisions

30. **note** that following Cabinet's consideration of this paper, further work will be needed to:
 - finalise the Heads of Agreement
 - draft and agree a Sponsors' Agreement;
 - establish a Sponsors' Forum;
 - draft and agree a Project Delivery Agreement;
 - review the outcomes of the Gateway review and provide recommendations to the Sponsors' Forum;
 - establish a process for regular due diligence reviews, the first of which will need to be completed in time for new City Rail Link Limited board members;
 - appoint members to the City Rail Link Limited Board, including some members being contracted earlier to support the Sponsors to make decisions related to procurement and project delivery;
 - review the existing strategy for value creation around the stations; and
 - review the existing operating model and provide recommendations, including implications for ownership and future funding arrangements.

Delegated authority for Ministers

31. **authorise** the Minister of Finance or Associate Minister of Finance, and the Minister of Transport to finalise and sign the Heads of Agreement on behalf of the Crown
32. **authorise** the Minister of Finance or Associate Minister of Finance, and the Minister of Transport to oversee negotiation of the details of the Sponsors' Agreement, Project Delivery Agreement and any other legal documentation required to bring the Crown's funding commitment and associated conditions into effect
33. **authorise** the Minister of Finance or Associate Minister of Finance, and the Minister of Transport to make decisions on behalf of the Crown as a Sponsor in relation to the City Rail Link to enable the project to continue, and to sub-delegate authority to make such decisions where appropriate
34. **note** that the Minister of Finance or Associate Minister of Finance, and the Minister of Transport will report back to Cabinet before finalising the Sponsors' agreement for signing or earlier, if there are significant risks or changes to the agreed Crown position
35. **note** that, the Minister of Finance or Associate Minister of Finance, and the Minister of Transport will advise Cabinet on the desired approach for finalising the Project Delivery Agreement and remaining legal documentation

Publicity

36. **note** that the Minister of Finance, Associate Minister of Finance and the Minister of Transport will work with the Mayor of Auckland on any possible announcement at the time of the signing of the Heads of Agreement.

Hon Steven Joyce
Associate Minister of Finance

Dated: _____

Hon Simon Bridges
Minister of Transport

Dated: _____



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

City Rail Link Project

Portfolios **Finance / Transport**

On 12 September 2016, following reference from the Cabinet Economic Growth and Infrastructure Committee (EGI), Cabinet:

Background

- 1 **noted** that on 9 December 2015, EGI authorised the Minister of Finance and the Minister of Transport to enter into negotiations with Auckland Council with a view to formalising the commitment to provide Crown funding, subject to a range of funding, ownership and risk issues being successfully negotiated and resolved [EGI-15-MIN-0197];
- 2 **noted** that on 6 July 2016, EGI agreed in principle that the:
 - 2.1 Crown would provide 50 per cent of the agreed capital costs of the City Rail Link;
 - 2.2 early works undertaken prior to a formal commitment of funding from the Crown will be included in the Crown's funding, minus any financing costs incurred by Auckland Council;
 - 2.3 wider network improvements needed to realise the full benefits of the City Rail Link are not included in the Crown's funding, unless there is an opportunity to use these as leverage for wider policy concessions;

[EGI-16-MIN-0175]

Agreeing a Heads of Agreement

- 3 **agreed** that the Crown provide an in-principle funding commitment for 50 per cent of the project costs of the City Rail Link through a Heads of Agreement with Auckland Council that sets out a number of conditions that commitment is subject to including Auckland Council's agreement to an agreed process and a number of policy principles intended to guide the actions of the two Sponsors going forward;
- 4 **noted** that the Heads of Agreement will be drafted to reflect the Crown position agreed through the submission under CAB-16-SUB-0462;
- 5 **noted** that officials and Auckland Council officers have reached alignment on the concept and terms of a Heads of Agreement as outlined in the submission under CAB-16-SUB-0462 for Cabinet and Councillors to approve;

- 6 **noted** that a more detailed Sponsors' Agreement will be required subsequent to the Heads of Agreement to give effect to the terms specified in the latter and formalise the respective funding shares of both parties;

Scope and size of the Crown's funding commitment

- 7 **agreed** that the Crown will provide 50 per cent of project costs for the City Rail Link project, with a funding framework to be specified in the Sponsors' Agreement;
- 8 **agreed** that for the early construction works committed prior to the finalisation of the Crown's funding commitment, the Crown provide 50 per cent of the initial committed contract price for the early works contracts plus such additional amounts contractually payable to the early works contractors that the Crown considers to be reasonable, as these contracts were agreed without Crown involvement;
- 9 **agreed** that the Crown's funding share will include the costs and risks associated with the main bored tunnel, stations at Aotea and Karangahape, and upgrades at Britomart, Otahuhu, Henderson, Newmarket and the Strand;
- 10 **agreed** that the Crown's funding share will not include the cost of wider network improvements needed to realise the full benefits of the City Rail Link, such as resilience upgrades and a third main line between Wiri and Westfield, and costs that will be required as a result of the City Rail Link, such as new rolling stock and level crossings;
- 11 **noted** that the estimated funding share for the Crown for the City Rail Link project is up to \$1.69 billion, accounting for P90 contingency that assumes a 90 per cent probability that this cost will not be exceeded, inflation and additional costs identified upon completion of a more detailed design by Auckland Transport;

Timing of the Crown's funding commitment

- 12 **agreed** that the Crown will provide its funding for the City Rail Link from the date on which the Sponsors' Agreement comes into effect
- 13 **noted** that Auckland Council will incur additional financing costs in the interim to ensure the project can continue
- 14 **agreed** that the Crown will pay for 50 per cent of the financing costs incurred by Auckland Council between 1 July 2016 and the date the Sponsors' Agreement comes into effect, subject to the Sponsors' Agreement being agreed and signed;

Project governance and delivery

- 15 **agreed** that the risks for the Crown in funding the City Rail Link are best managed through establishing joint governance arrangements between the Crown and Auckland Council as co-sponsors;
- 16 **agreed** that the Crown's governance principles for delivering the City Rail Link are:
- 16.1 establish a new company to deliver the City Rail Link (referred to as City Rail Link Limited for the purpose of the Heads of Agreement);
 - 16.2 City Rail Link Limited will report to a Sponsors' Forum on project progress and to seek decisions on key specified matters;

- 16.3 sponsors will approve major decisions by agreement, including those relating to scope and funding;
- 16.4 City Rail Link Limited will be listed in Schedule 4A of the Public Finance Act 1989 and have a board of independent directors jointly appointed by the Sponsors based on a set of agreed competencies;
- 16.5 the Crown will hold a 51 per cent shareholding in City Rail Link Limited for the purpose of establishing the company as a majority Crown controlled entity but contractual arrangements will set out equal decision-making rights for both Sponsors;
- 16.6 Auckland Transport will be engaged by City Rail Link Limited for ongoing provision of technical and operational services and integrated project delivery;
- 16.7 KiwiRail will be engaged by City Rail Link Limited for ongoing provisions of technical and operational services in relation to the interface of the project with the wider rail network and rail services;
- 16.8 the Sponsors will harmonise and synchronise media statements in relation to the project, and branding should reflect the role of the Crown and Auckland Council as project Sponsors;
- 17 **agreed** that the Crown and Auckland Council will need to agree a Sponsors' Agreement that sets out the Sponsors' commitment, on a joint and equal basis, to fund and partner on the delivery of the project, and how the Sponsors will work together on wider objectives;
- 18 **agreed** that the Crown and Auckland Council will need to agree a Project Delivery Agreement that sets out what the Sponsors require from City Rail Link Limited as well as confirming the Sponsors' funding commitments in line with an agreed forecast funding schedule;
- 19 **noted** that there may be other legal documentation required to bring the joint governance and risk-sharing arrangements into effect;
- 20 **agreed** that while the Sponsors' Agreement is being developed, and until City Rail Link Limited is established, Auckland Transport will continue to carry out project delivery and associated services, but will carry out such services in close consultation with, and taking into account the views of, the Sponsors and will escalate significant issues for resolution to the Sponsors and senior management of Auckland Transport;
- 21 **agreed** that Auckland Transport must seek the Sponsors' approval before taking decisions on procurement or entering into any other material contract or binding arrangement in relation to the project;
- 22 **agreed** that the Crown and Auckland Council will determine the role, responsibilities and composition of the existing Project Control Group, which operates under a delegated authority from the Auckland Transport Board, while City Rail Link Limited is being established;

Review of project procurement strategy

- 23 **noted** that a Gateway review of the existing procurement strategy has been initiated to ensure the procurement strategy delivers value-for-money and optimises whole-of-life costs,
- 24 **agreed** that the results of the Gateway review will be used to inform the final procurement strategy prior to seeking expressions of interest in the first construction contract for the main works;

Wider policy objectives

- 25 **agreed** that the Crown and Auckland Council explore the opportunity enabled by the City Rail Link for value creation around the new stations, particularly by seeking to create more transit-oriented development;
- 26 **agreed** that the Crown and Auckland Council commit to optimising the wider benefits of the City Rail Link in relation to the housing development opportunities enabled by the City Rail Link across the Auckland rail network;

27 Out of Scope

- 28 **agreed** that the Crown and Auckland Council will need to agree arrangements for determining the ultimate ownership and operation of the City Rail Link in the Sponsors' Agreement, which will need to be informed by the broader rail network operating model given the close links across these issues;
- 29 **agreed** that the Crown and Auckland Council commit to considering how any future projects for investment in the Auckland rail network may maximise benefits for Auckland of Crown investment including value uplift from commercial developments and housing development potential;

Further work

- 30 **noted** that further work will be needed to:
- 30.1 finalise the Heads of Agreement;
 - 30.2 draft and agree a Sponsors' Agreement;
 - 30.3 establish a Sponsors' Forum;
 - 30.4 draft and agree a Project Delivery Agreement;
 - 30.5 review the outcomes of the Gateway review and provide recommendations to the Sponsors' Forum;
 - 30.6 establish a process for regular due diligence reviews, the first of which will need to be completed in time for new City Rail Link Limited board members;
 - 30.7 appoint members to the City Rail Link Limited Board, including some members being contracted earlier to support the Sponsors to make decisions related to procurement and project delivery;

- 30.8 review the existing strategy for value creation around the stations;
- 30.9 review the existing operating model and provide recommendations, including implications for ownership and future funding arrangements;

Authorisations

- 31 **authorised** the Minister of Finance or Associate Minister of Finance (Hon Steven Joyce), and the Minister of Transport to finalise and sign the Heads of Agreement on behalf of the Crown;
- 32 **authorised** the Minister of Finance or Associate Minister of Finance (Hon Steven Joyce), and the Minister of Transport to oversee negotiation of the details of the Sponsors' Agreement, Project Delivery Agreement and any other legal documentation required to bring the Crown's funding commitment and associated conditions into effect;
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- 34 **noted** that the Minister of Finance or Associate Minister of Finance (Hon Steven Joyce), and the Minister of Transport will report to Cabinet before finalising the Sponsors' agreement for signing or earlier, if there are significant risks or changes to the agreed Crown position;
- 35 **noted** that, the Minister of Finance or Associate Minister of Finance (Hon Steven Joyce), and the Minister of Transport will advise Cabinet on the desired approach for finalising the Project Delivery Agreement and remaining legal documentation;

Publicity

- 36 **noted** that the Minister of Finance, the Associate Minister of Finance (Hon Steven Joyce), and the Minister of Transport will work with the Mayor of Auckland on any possible announcement at the time of the signing of the Heads of Agreement.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Minister of Finance
Associate Minister of Finance (Hon Steven Joyce)
Minister of Transport



Cabinet

Summary

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City Rail Link Project

Portfolio Finance / Transport

On 7 September 2016, EGI considered a paper seeking approval for the terms and conditions of the Crown's in-principle funding commitment to the Auckland City Rail Link, and authorisation to approve the documentation to bring the funding commitment into effect. EGI referred the paper to Cabinet for the information of all Ministers Out of Scope

The paper considered by EGI is attached immediately below this coversheet.

The Associate Minister of Finance (Hon Steven Joyce) and Minister of Transport recommend that Cabinet:

Background

- 1 note that on 9 December 2015, the Cabinet Economic Growth and Infrastructure Committee (EGI) authorised the Minister of Finance and the Minister of Transport to enter into negotiations with Auckland Council with a view to formalising the commitment to provide Crown funding, subject to a range of funding, ownership and risk issues being successfully negotiated and resolved [EGI-15-MIN-0197]
- 2 note that on 6 July 2016, EGI agreed in principle that the:
 - 2.1 Crown would provide 50 per cent of the agreed capital costs of the City Rail Link;
 - 2.2 early works undertaken prior to a formal commitment of funding from the Crown will be included in the Crown's funding, minus any financing costs incurred by Auckland Council;
 - 2.3 wider network improvements needed to realise the full benefits of the City Rail Link are not included in the Crown's funding, unless there is an opportunity to use these as leverage for wider policy concessions;

[EGI-16-MIN-0175]

Agreeing a Heads of Agreement

- 3 agree that the Crown provide an in-principle funding commitment for 50 per cent of the project costs of the City Rail Link through a Heads of Agreement with Auckland Council that sets out a number of conditions that commitment is subject to including Auckland Council's agreement to an agreed process and a number of policy principles intended to guide the actions of the two Sponsors going forward;

- 4 note that the Heads of Agreement will be drafted to reflect the Crown position agreed through the submission under CAB-16-SUB-0462;
- 5 note that officials and Auckland Council officers have reached alignment on the concept and terms of a Heads of Agreement as outlined in the submission under CAB-16-SUB-0462 for Cabinet and Councillors to approve;
- 6 note that a more detailed Sponsors' Agreement will be required subsequent to the Heads of Agreement to give effect to the terms specified in the latter and formalise the respective funding shares of both parties;

Scope and size of the Crown's funding commitment

- 7 agree that the Crown will provide 50 per cent of project costs for the City Rail Link project, with a funding framework to be specified in the Sponsors' Agreement;
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Timing of the Crown's funding commitment

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- 14 agree that the Crown will pay for 50 per cent of the financing costs incurred by Auckland Council between 1 July 2016 and the date the Sponsors' Agreement comes into effect, subject to the Sponsors' Agreement being agreed and signed;

Project governance and delivery

- 15 agree that the risks for the Crown in funding the City Rail Link are best managed through establishing joint governance arrangements between the Crown and Auckland Council as co-sponsors;

- 16 agree that the Crown's governance principles for delivering the City Rail Link are:
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- 23 note that a Gateway review of the existing procurement strategy has been initiated to ensure the procurement strategy delivers value-for-money and optimises whole-of-life costs,
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- 25 agree that the Crown and Auckland Council explore the opportunity enabled by the City Rail Link for value creation around the new stations, particularly by seeking to create more transit-oriented development;
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Publicity

- 36 note that the Minister of Finance, the Associate Minister of Finance (Hon Steven Joyce), and the Minister of Transport will work with the Mayor of Auckland on any possible announcement at the time of the signing of the Heads of Agreement.

Gerrard Carter
for Secretary of the Cabinet

Hard copy distribution:
The Cabinet

Chair

Cabinet Economic Growth and Infrastructure Committee

ESTABLISHMENT OF CITY RAIL LINK LIMITED

Proposal

1. We propose to establish a company, named City Rail Link Limited (CRL), and to add it to Schedule 4A of the Public Finance Act 1989, to manage the delivery of the Auckland City Rail Link project. If this is agreed, we will submit a paper to Cabinet Legislation Committee to approve the necessary Order in Council to add the company to Schedule 4A.
2. A separate paper will be submitted to Cabinet seeking budgetary appropriation and approval of the key terms in the key governance and contractual documents, consisting of a Sponsors Agreement and Project Delivery Agreement.

Executive summary

3. This paper seeks Cabinet's agreement to establish CRL as a company that will be responsible for delivery of the Auckland City Rail Link project (the project). It details (among other things) the structure and objectives of the company, and the accountability measures that will be put in place.
4. The project consists of two underground rail lines, running parallel to each other for 3.4 kilometres. The project will connect Britomart exchange to the existing Western Line in the vicinity of the current Mt Eden station. This will substantially increase passenger train capacity within Central Auckland.
5. The project is a significant infrastructure investment to improve transport outcomes in Auckland. The Crown and Auckland Council have agreed to act as joint Sponsors for CRL, whose brief will be to manage and deliver the project, and to hand it over to the designated operators. The Sponsors will be sole funders for CRL and its project activities.
6. The Sponsors have agreed to the establishment of a special purpose corporate vehicle to assume responsibility for the project from Auckland Transport (early works are already in progress under the direction of Auckland Transport). We plan to add the special purpose corporate vehicle to Schedule 4A of the Public Finance Act 1989 in order to allow Auckland Council to co-invest in the company.
7. The Public Finance Act 1989 requires that the Crown hold more than 50 percent of the issued share capital in a Schedule 4A company. The Crown will hold 50 percent plus two of the shares in CRL, with Auckland Council holding the remainder. The Minister of Finance and the Minister of Transport will hold the shares in CRL on behalf of the Crown in equal shares.

8. As early preparatory works on the City Rail Link have already commenced, the aim is to have CRLL established in April 2017, with Crown funding scheduled to commence no later than July 2017.

Background

The Auckland City Rail Link project

9. In September 2016, in accordance with Cabinet decisions [CAB-16-MIN-0462 refers], the Associate Minister of Finance and the Minister of Transport announced the Crown's commitment to fund 50 percent of the project. At the time, the estimated cost range for the project was between \$2.8 billion and \$3.4 billion.
10. Once completed, the project will be able to support the movement of 18,000 passengers per hour in each direction, with up to 24 trains per hour per direction timetabled.
11. The project includes two new stations (at Aotea Square and Karangahape Road), and will upgrade the existing Mount Eden station. The project also includes modifications to the Western Line at the connection points, modifications to Britomart Station, and other modifications to the existing rail network.
12. Early construction works have already commenced, managed by a dedicated City Rail Link project team within Auckland Transport, and overseen by the Board of Auckland Transport. The Crown's decision to co-fund the project results in a new funding and ownership model, and it is therefore desirable to establish an independent special purpose company, City Rail Link Limited (CRLL), as soon as possible to reflect the Crown's ownership interests.
13. In the interim, responsibility for delivery of the project will formally remain with Auckland Transport until CRLL is sufficiently established to assume responsibility. Tenders have not yet been sought for the major components of the project.

CRLL

Company functions and objectives

14. The main function of CRLL will be to deliver the project on time, and at the lowest whole-of-life cost, consistent with project scope and objectives. The Project Delivery Agreement will reflect this.
15. The Sponsors will provide all funding for CRLL operations. CRLL will not be expected to turn a profit, and it is not expected that the company will provide returns to its shareholders.
16. The duties of CRLL will consist of (among other things):
- 16.1. ensuring that the project is delivered in line with the requirements in the Project Delivery Agreement

- 16.2. reporting regularly to Sponsors on progress towards delivering the project
- 16.3. escalating matters to Sponsors when appropriate (as defined in the Project Delivery Agreement).
17. CRLL will not be responsible for delivering associated commercial and residential developments on land owned by the project. However, it will need to deliver the project in a way that enables those developments to occur at a later stage.
18. The company constitution will provide a mechanism for defining the objectives of CRLL, and what limitations might be placed on the company's ability to operate, given that CRLL is not a truly 'commercial' entity and only has one main function, as outlined in paragraph 15.

Company form

19. Officials considered a number of options for the structure of CRLL, including directly funding Auckland Transport, a joint venture contractual arrangement, and a Council Controlled Organisation. We consider that a Schedule 4A company best meets our objectives. A Schedule 4A company requires that the Crown hold more than 50 percent of the shares in the company. Additionally, Auckland Council holding slightly less than 50 percent of the shares means that Council Controlled Organisation obligations do not apply.
20. The proposed approach is also similar to that adopted for the establishment of Tamaki Redevelopment Company and this provides a useful and familiar approach for both shareholders. Additionally, a Schedule 4A company provides a convenient vehicle for Auckland Council to co-invest.
21. CRLL's operational parameters and requirements will be governed by a Project Delivery Agreement, which is being co-developed with Auckland Council. Governance arrangements will be guided by a Sponsors Agreement, which will determine how the Sponsors will exercise oversight.

Company structure and governance

22. The company will be structured as a limited liability company, named City Rail Link Limited (CRLL) with a written constitution that reflects its special purpose. A Board, with a Chair and four directors, will govern CRLL. The CRLL Board will have sole authority to manage and supervise the construction and handover of the project. The role of shareholders will be mainly limited to the appointment or removal of Board members (alongside Auckland Council) and approval of major and significant transactions in their role as Sponsors (these approval points will be defined in the Project Delivery Agreement).
23. Shareholders (the Crown and Auckland Council) will also have some statutory responsibilities relating to provisions in the Crown Entities Act 2004. For example, shareholding Ministers will need to comment on drafts of company accountability documents (for example, Schedule 4A companies are required to complete a Statement of Intent and an annual Statement of Performance Expectations).

24. We propose that the Minister of Finance and the Minister of Transport hold the shares in CRLL on behalf of the Crown and represent the Crown Sponsor.
25. We anticipate that the majority of personnel and contractors currently working on the project full time, along with all relevant assets, such as land and consents, will be transferred from Auckland Transport to CRLL. Discussions on the best way to achieve this are still ongoing.
26. On 14 December 2016, Cabinet confirmed Sir Brian Roche¹ as Chair designate of CRLL [APH-16-MIN-0297 refers]. The appointment has been confirmed by Auckland Council's Governing Body as the co-sponsor. Sir Brian is currently the Group Chief Executive of New Zealand Post Limited, a position he will hold until April 2017. Sir Brian has extensive experience in both the public and private sectors, including involvement with the Transmission Gully project.
27. No other directors have been appointed at this time. Treasury and the Ministry of Transport, together with Auckland Council, are working through the director appointment process. Sir Brian is also involved in this process.

Role of Sponsors and Sponsors Forum

28. The two Sponsors (the Crown and Auckland Council) will principally interact with CRLL through a Sponsors Forum. This Forum will be established as part of the Sponsors Agreement.
29. The role of the Sponsors is to provide funding, scope and strategic oversight and approval of significant strategic decisions in relation to the project, on a basis that promotes consensus decision making, as referred to in the Project Delivery Agreement and Sponsors Agreement.
30. The Sponsors Agreement will regulate the decision making processes that are to apply between the Crown (through the shareholding Ministers) and Auckland Council. Sponsors will not be involved in operational decision-making.
31. The Sponsors Forum will provide the mechanism for the CRLL Board to escalate matters. In line with the commitment to consensus decision making, Sponsors will be equally represented on the Forum, despite the Crown owning slightly more than 50 percent of the shares in CRLL.
32. Additionally, the Project Delivery Agreement will provide for an escalating set of actions Sponsors can take to remedy issues that threaten CRLL's ability to deliver the project in line with the objective (in particular, substantial cost overruns). These actions range from requiring a remedial action plan through to replacement of the Board.

¹ Brian Roche was announced as a Knight Companion of the New Zealand Order of Merit in the New Year Honours List 2017.

33. At this stage, it is envisaged that the Project Delivery Agreement will provide Sponsors (in the Crown's case, the shareholding Ministers) with the following approval points:
- 33.1. reviewing or approving the company's delivery strategy, which includes the interface management strategy (ensuring the interoperability between the various contracts and the existing network), insurance strategy and procurement strategy
 - 33.2. approving tender documentation and delivery contracts (this is still being considered)
 - 33.3. approving any changes to project scope or delivery requirements

Project funding

34. As part of public announcements in September 2016, the Associate Minister of Finance and the Minister of Transport set an expected cost range of between \$2.8 billion and \$3.4 billion. The most recent estimates have been at the higher end of that range, but an agreed target outturn cost has yet to be agreed with CRLL.
35. A separate paper will be submitted to Cabinet seeking budgetary appropriation. Comprehensive information on cost will be provided in that paper.

Company governance and accountability obligations

36. As a Schedule 4A company, CRLL will be subject to a number of the reporting obligations contained in the Crown Entities Act 2004. This includes publication of a Statement of Intent, Statement of Performance Expectations and a company constitution to be presented to the House of Representatives.
37. It is envisaged that the Project Delivery Agreement will also require the CRLL Board report regularly to the Sponsors on a variety of issues, including monthly reporting of expenditure against forecast, quarterly reporting on project progress, specific review points and any other monitoring or audits required by Sponsors.
38. In common with most other Schedule 4A companies, CRLL will be subject to the Official Information Act 1982 and the Ombudsmen Act 1975. This will provide additional accountability and transparency measures.
39. CRLL will be subject to auditing by the Office of the Auditor-General, in accordance with Section 156 of the Crown Entities Act 2004.

Monitoring arrangements

40. CRLL will be monitored jointly by the Crown and Auckland Council, with the Ministry of Transport acting as the monitoring department on behalf of the Crown. The monitoring role includes:
- 40.1. monitoring and advising on CRLL's strategic direction and planning processes (including its Statement of Intent and annual Statement of Performance)

Expectations), the performance of the company in delivering the project and financial and other risks

- 40.2. supporting the Minister of Finance and the Minister of Transport with Sponsor decision making (for example, approval and intervention points).

Application of specific financial provisions in Crown Entities Act 2004 to CRL

41. Table 1 (on the next page) lays out which provisions of the Crown Entities Act 2004 (relating to financial matters, rather than reporting or governing matters) that can be applied to CRL.
42. Given that CRL has only one objective, and funding is being provided by the Crown and Auckland Council, we do not consider that it is necessary for CRL to acquire financial products, borrow, or have broad ability to give guarantees or indemnities or use derivatives.

Table 1: Application of specific financial provisions of Crown Entities Act 2004

Section	Applies to CRL?	Justification
Section 161 (restriction on acquisition of financial products)	Yes	CRL has one particular purpose. It is not considered necessary for CRL to acquire financial products in order to deliver on this purpose.
Section 162 (restriction on borrowing)	Yes	Funding for CRL is being entirely provided by Sponsors. It is not necessary for CRL to have the ability to borrow.
Section 163 (restriction on giving of guarantees or indemnities)	Yes	Funding for CRL is being entirely provided by Sponsors. It is not necessary for CRL to have broad ability to give guarantees and indemnities. ²
Section 164 (restriction on use of derivatives)	Yes	CRL has one particular purpose. It is not considered necessary for CRL to engage in derivative transactions in order to deliver on this purpose.

Consultation

43. Auckland Council officers have been consulted, and agree with the contents of the paper. The State Services Commission has been consulted on the paper, and notes

² While Section 163 limits CRL's ability to issue guarantees and indemnities, the company will still have the ability to issue some classes of indemnities without the approval of shareholding Ministers in the ordinary course of the company's operations, under the provisions of the Crown Entities (Financial Powers) Regulations 2005.

the following consequences of the establishment of CRRL as a Schedule 4A company:

- 43.1. it will be part of the State services as defined in the State Sector Act 1988
- 43.2. it may be subject to Ministerial directions under Section 107 of the Crown Entities Act 2004 to support a whole of government approach
- 43.3. the employees will be state servants and may be subject to the State Services Code of Conduct if the State Services Commissioner applies the Code to the company.

44. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

- 45. A paper seeking budgetary appropriation for the project will be submitted to Cabinet separately.

Human rights implications

- 46. This proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

- 47. An Order in Council will be required to add CRLL to Schedule 4A of the Public Finance Act 1989.
- 48. Subject to Cabinet approval, the Ministry of Transport will instruct Parliamentary Counsel Office to prepare the Order in Council, and will submit the Order in Council to Cabinet Legislation Committee (LEG) for consideration.

Waiving of 28-day rule

- 49. We consider that it is appropriate to waive the 28-day rule for the Order in Council because it has little or no effect on the public, and it is desirable to establish CRLL as soon as possible.

Regulatory Impact Analysis

- 50. The regulatory impact analysis requirements do not apply to the options considered in this paper as they have no or minor impacts on businesses, individuals and/or not for profit entities. Therefore, a Regulatory Impact Statement is not required to be prepared.

Gender implications

- 51. There are no gender implications from this proposal.

Disability perspective

52. None.

Publicity

53. We intend to issue a press release announcing that a company called City Rail Link Limited will be added to Schedule 4A of the Public Finance Act 1989 to manage the delivery of the Auckland City Rail Link project.

Recommendations

54. The Minister of Finance and the Minister of Transport recommend that the Committee:

1. **agree** to the creation of a limited liability company called City Rail Link Limited to manage the construction and delivery of the Auckland City Rail Link project
2. **agree** that City Rail Link Limited be added to Schedule 4A of the Public Finance Act 1989
3. **note** that the Crown will hold 50 percent plus two of the shares in City Rail Link Limited, with the remainder held by Auckland Council
4. **note** that for a company listed in Schedule 4A of the Public Finance Act 1989, the Crown's shares must be held equally by two ministers, one of which must be the Minister of Finance
5. **agree** that the Minister of Finance and the Minister of Transport will hold the shares in City Rail Link Limited on behalf of the Crown
6. **note** that a separate paper will be submitted to Cabinet seeking budgetary appropriation for the City Rail Link project
7. **agree** that City Rail Link Limited will be made subject to Crown Entities Act 2004 restrictions on:
 - acquiring financial products (Section 161)
 - borrowing (Section 162)
 - the giving of guarantees and indemnities (Section 163)
 - use of derivatives (Section 164).
8. **note** that City Rail Link Limited will be subject to the provisions of the Official Information Act 1982 and the Ombudsmen Act 1975
9. **agree** that City Rail Link Limited will be monitored by the Ministry of Transport on behalf of the Crown

10. **agree** to the issue of drafting instructions to the Parliamentary Counsel Office to draft an Order in Council to:

- add City Rail Link Limited to Schedule 4A of the Public Finance Act 1989
- apply Sections 161 to 164 of the Crown Entities Act 2004 to CRL

Hon Steven Joyce
Minister of Finance

Dated: _____

Hon Simon Bridges
Minister of Transport

Dated: _____

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Cabinet Economic Growth and Infrastructure Committee

Minute of Decision

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Establishment of City Rail Link Limited

Portfolios **Finance / Transport**

On 15 February 2017, the Cabinet Economic Growth and Infrastructure Committee:

- 1 **agreed** to the creation of a limited liability company, called City Rail Link Limited, to manage the construction and delivery of the Auckland City Rail Link project;
- 2 **agreed** that City Rail Link Limited be added to Schedule 4A of the Public Finance Act 1989;
- 3 **noted** that the Crown will hold 50 percent plus two of the shares in City Rail Link Limited, with the remainder held by Auckland Council;
- 4 **noted** that for a company listed in Schedule 4A of the Public Finance Act 1989, the Crown's shares must be held equally by two Ministers, one of which must be the Minister of Finance;
- 5 **agreed** that the Minister of Finance and the Minister of Transport will hold the shares in City Rail Link Limited on behalf of the Crown;
- 6 **noted** that a separate paper will be submitted to Cabinet seeking budgetary appropriation for the City Rail Link project;
- 7 **agreed** that City Rail Link Limited be made subject to Crown Entities Act 2004 restrictions on:
 - 7.1 acquiring financial products (section 161);
 - 7.2 borrowing (section 162);
 - 7.3 the giving of guarantees and indemnities (section 163);
 - 7.4 use of derivatives (section 164);
- 8 **noted** that City Rail Link Limited will be subject to the provisions of the Official Information Act 1982 and the Ombudsmen Act 1975;
- 9 **agreed** that City Rail Link Limited will be monitored by the Ministry of Transport on behalf of the Crown;

10 **authorised** the Ministers of Finance and Transport to issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council to:

10.1 add City Rail Link Limited to Schedule 4A of the Public Finance Act 1989;

10.2 apply sections 161 to 164 of the Crown Entities Act 2004 to City Rail Link Limited.

Janine Harvey
Committee Secretary

Present:

Hon Paula Bennett
Hon Steven Joyce (Chair)
Hon Gerry Brownlee
Hon Simon Bridges
Hon Michael Woodhouse
Hon Anne Tolley
Hon Nathan Guy
Hon Dr Nick Smith
Hon Judith Collins
Hon Maggie Barry
Hon Paul Goldsmith
Hon Nicky Wagner
Hon Jacqui Dean
Hon Te Ururoa Flavell

Officials present from:

Officials Committee for EGI

Hard-copy distribution:

Minister of Finance
Minister of Transport

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Cabinet Economic Growth and Infrastructure Committee

Summary

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Establishment of City Rail Link Limited

Portfolios Finance / Transport

Purpose This paper seeks agreement to establish a company, to be named City Rail Link Limited (CRL), to manage the delivery of the Auckland City Rail Link project.

Previous Consideration On 12 September 2016, Cabinet agreed to the terms and conditions of the Crown's in-principle funding commitment to the Auckland City Rail Link [CAB-16-MIN-0462].

Summary The Auckland City Rail Link project consists of two underground rail lines, running parallel for 3.4 kilometres. The project will connect Britomart exchange to the existing Western Line in the vicinity of the current Mt Eden station. This will substantially increase passenger train capacity within central Auckland.

The Crown and Auckland Council have agreed to act as joint Sponsors for the project. The Sponsors have agreed to the establishment of a special purpose corporate vehicle to assume responsibility for the project from Auckland Transport. The proposed approach is similar to that adopted for the establishment of Tamaki Redevelopment Company.

Agreement is sought to the establishment of CRL as a limited liability company listed in Schedule 4A of the Public Finance Act 1989. The Crown will hold 50 percent plus two of the shares in CRL, with Auckland Council holding the remainder. It is proposed that the Minister of Finance and the Minister of Transport will hold the CRL shares on behalf of the Crown.

Sir Brian Roche has been confirmed as Chair designate of CRL. The Ministry of Transport will be the monitoring department on behalf of the Crown.

Early preparatory works on the Auckland City Rail Link have commenced, and it is aimed to have CRL established in April 2017, with Crown funding scheduled to commence no later than July 2017.

Regulatory Impact Analysis Not required.

Baseline Implications	A paper seeking a budgetary appropriation for the project will be submitted to Cabinet separately.
Legislative Implications	An Order in Council will be required to add CRLI to Schedule 4A of the Public Finance Act 1989 and to apply sections 161-164 of the Crown Entities Act 2004 to CRLI.
Timing Issues	It is desirable to establish CRLI as soon as possible (April 2017), and therefore a waiver of the 28-day rule will be sought when the Order in Council is submitted to Cabinet for approval.
Announcement	The Ministers of Finance and Transport will issue a press release.
Proactive Release	None.
Consultation	<p>Paper prepared by Treasury and Transport. SSC was consulted. DPMC was informed. Auckland Council was also consulted.</p> <p>The Minister of Finance and the Minister of Transport indicate that discussion is not required with the government caucus or with other parties represented in Parliament.</p>

The Minister of Finance and the Minister of Transport recommend that the Committee:

- 1 agree to the creation of a limited liability company, called City Rail Link Limited, to manage the construction and delivery of the Auckland City Rail Link project;
- 2 agree that City Rail Link Limited be added to Schedule 4A of the Public Finance Act 1989;
- 3 note that the Crown will hold 50 percent plus two of the shares in City Rail Link Limited, with the remainder held by Auckland Council;
- 4 note that for a company listed in Schedule 4A of the Public Finance Act 1989, the Crown's shares must be held equally by two Ministers, one of which must be the Minister of Finance;
- 5 agree that the Minister of Finance and the Minister of Transport will hold the shares in City Rail Link Limited on behalf of the Crown;
- 6 note that a separate paper will be submitted to Cabinet seeking budgetary appropriation for the City Rail Link project;
- 7 agree that City Rail Link Limited be made subject to Crown Entities Act 2004 restrictions on:
 - 7.1 acquiring financial products (section 161);
 - 7.2 borrowing (section 162);

- 7.3 the giving of guarantees and indemnities (section 163);
- 7.4 use of derivatives (section 164);
- 8 note that City Rail Link Limited will be subject to the provisions of the Official Information Act 1982 and the Ombudsmen Act 1975;
- 9 agree that City Rail Link Limited will be monitored by the Ministry of Transport on behalf of the Crown;
- 10 authorise the Ministers of Finance and Transport to issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council to:
 - 10.1 add City Rail Link Limited to Schedule 4A of the Public Finance Act 1989;
 - 10.2 apply sections 161 to 164 of the Crown Entities Act 2004 to City Rail Link Limited.

Janine Harvey
Committee Secretary

Hard-copy distribution:

Cabinet Economic Growth and Infrastructure Committee
Office of the Prime Minister
Deputy Chief Executive, Policy, DPMC
John Scott, PAG, DPMC

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Chair
Cabinet

AUCKLAND CITY RAIL LINK GOVERNANCE AND FUNDING ARRANGEMENTS

Proposal

1. This paper seeks Cabinet approval for the Minister of Finance and the Minister of Transport to finalise the governance and funding arrangements for City Rail Link Limited, the company that is to complete the construction of the City Rail Link project in Auckland. We and Auckland Council wish to complete the legal agreements for the transfer of assets and staff from Auckland Transport to City Rail Link Limited by 1 July 2017.
2. In the event that Cabinet decides to refer this paper to Cabinet Economic Growth and Infrastructure Committee (EGI), we recommend that EGI be given power to act, so that the deadline of 1 July can be met.

Executive summary

3. The Government and Auckland Council signed a Heads of Agreement in September 2016 to guide the actions of both parties (together the Sponsors) to set up arrangements for the funding, governance and risk management of the City Rail Link including:
 - 3.1. A Project Delivery Agreement that will govern the relationship between City Rail Link Limited and its Sponsors.
 - 3.2. A Sponsors' Agreement that will govern the relationship between the Crown and Auckland Council as joint Sponsors and funders of the City Rail Link.
4. Crown officials, Auckland Council officers and Sir Brian Roche, City Rail Link Limited Chair, have reached alignment on most of the key terms of both contractual arrangements (noting that on the Sponsors' Agreement, Sir Brian Roche's interest is primarily on matters that could have an impact on City Rail Link Limited). The key terms of interest are:
 - 4.1. Expected outturn cost of the project: \$3,372 million net (after sales of surplus land).
 - 4.2. Funding commitment up to: \$3,400 million.
 - 4.3. Each sponsor to meet 50 per cent of the costs.

- 4.4. City Rail Link Limited will be provided with \$3,400 million of uncalled capital, which it can draw down as needed. The flow of funds will not be linked to performance, since it has no reserves with which to meet contractual commitments.
- 4.5. Project delivery is vested with City Rail Link Limited. Sponsors have certain approval rights for milestones that have a significant financial impact or that could have a significant impact on the outcomes of the project.
- 4.6. Sponsors will have the right to request that remedial actions be taken if there are adverse events, cost overruns or delays, including the ability to replace the Board of directors.
- 4.7. Ultimate arrangements for ownership and operation of the City Rail Link asset will be decided before award of main contracts, around September 2018.
5. There appears to be an issue with the tax treatment for City Rail Link Limited as it could be required to pay GST and income tax. We hope to find a solution to this over the next 12 months, but in the event that this is not possible the agreements allow for tax paid by Auckland Council and City Rail Link Limited to be reimbursed.
6. We are seeking delegated authority from Cabinet to agree certain outstanding issues and finalise the agreements for signing.
7. An overview of each of the contractual agreements is provided in the paper.
8. The Project Delivery Agreement includes certain conditions that need to be satisfied prior to it coming into effect. These conditions will also need to be satisfied prior to Crown funding coming into effect. Until these conditions are met, the Heads of Agreement continues to govern project delivery arrangements unless Sponsors agree otherwise. Auckland Council are working on transitional project delivery arrangements should there be a slight delay between the Project Delivery Agreement being signed and any of these conditions being satisfied to allow City Rail Link Limited to assume responsibility for the project.

Background

9. On 12 September 2016, Cabinet authorised the then associate Minister of Finance and Minister of Transport to sign a Heads of Agreement on behalf of the Crown that set out an in-principle commitment to fund the City Rail Link project in Auckland on an equal basis with Auckland Council [CAB-16-MIN-0462 refers].
10. The Heads of Agreement set out a number of conditions to guide the actions of the two signatories (Crown and Auckland Council) in setting up arrangements for the funding, governance and risk management of the City Rail Link. Principal among the terms of the Heads of Agreement was an agreement to establish an independent Special Purpose Vehicle to deliver the City Rail Link (City Rail Link Limited), working with Auckland Transport, KiwiRail and others as necessary.

11. Since the Heads of Agreement was signed, we have overseen negotiation of the more comprehensive contractual arrangements that will give effect to the terms of the Heads of Agreement and underpin the Crown's funding commitment to the City Rail Link:
- 11.1. A Project Delivery Agreement that will govern the relationship between City Rail Link Limited and its Sponsors (the Crown and Auckland Council).
- 11.2. A Sponsors' Agreement that will govern the relationship between the Crown and Auckland Council as joint Sponsors and funders of the City Rail Link.
12. The key contracts above will be supported by a number of agreements that City Rail Link Limited will need to negotiate with Auckland Transport, KiwiRail and other third party suppliers to deliver the City Rail Link project to the requirements of the Crown and Auckland Council.
13. Crown officials, Auckland Council officers and Sir Brian Roche, City Rail Link Limited Chair, have reached alignment on most of the key terms of both contractual arrangements (noting that on the Sponsors' Agreement, Sir Brian Roche's interest is primarily on matters that could have an impact on City Rail Link Limited).
14. This paper highlights the key terms of the contractual arrangements that will be of interest to Cabinet and briefly outlines the remaining terms of the Project Delivery Agreement and Sponsors' Agreement. We are seeking Cabinet approval of the key terms that have been agreed at officials' level and delegated authority for Ministers to oversee agreement to the outstanding matters yet to be resolved, which are noted in this paper.

Scope and size of the Crown's funding commitment

15. In September 2016, Cabinet agreed that the Crown would provide funding for 50 per cent of project costs for the City Rail Link. This would include the costs associated with the main bored tunnel, stations at Aotea and Karangahape, and upgrades at Britomart, Otahuhu Henderson, Newmarket and the Strand, Out of Scope
16. Cabinet noted at the time that the estimated funding share for the Crown for the City Rail Link project was up to \$1.69 billion, accounting for P90 contingency that assumes a 90 per cent probability that this cost will not be exceeded. \$436 million was allocated in Budget 2017.

17. Table 1 below outlines the changes the project team have made to the cost estimates announced in September 2016 to account for further costs associated with property transfer and omitted expenses. These figures are the project team's best estimate at this point in time based on detailed planning and design undertaken to date. Note that the net figures indicate the long term fiscal impact of the project while the gross figures set out the amount of capital that needs to be made available. The difference between the two is primarily the proceeds of land sales expected to occur toward the end of the project.

Table 1 – Description of changes to City Rail Link cost estimates

	P50 \$ million	P90 \$ million
Project announcement cost September 2016	3,100	3,400
Project team revised cost estimate November 2016	3,285	3,421
Opex for governance and management of CRL	16	16
Project cost agreed at Budget 2017	3,301	3,437
Property transfer costs	71	71
Total project cost (net cost)	3,372	3,508
Future land sale price	228	228
Total Sponsor Funding Commitment (gross cost)	3,600	3,736

18. Crown officials commissioned an independent review from an international engineering consultancy with rail expertise, which found that the estimates for the construction elements were reasonable but raised concerns with the methodology used to estimate the non-construction elements. The City Rail Link project team considered the review and retained confidence in its own cost estimates, raising concerns with the methodology of the review and highlighting areas in the project cost estimate that already included some of the cost elements the review identified as missing.
19. Sir Brian Roche has indicated he is comfortable with the project team's cost estimates. Given that, our recommendation is that we accept these estimates and use them in the Project Delivery Agreement to drive cost efficiencies.

Management of the Crown's funding commitment

Flow of funds

20. City Rail Link Limited will be provided with \$3,400 million of uncalled capital, which it can draw down as needed. Because it has no reserves, there is little point in having a right to withhold funds in the event of performance issues. The agreements give Sponsors a number of levers with which to deal with performance issues, as detailed

below. We consider these to represent an adequate balance between giving the company the freedom to manage the project efficiently and the need to be able to intervene if problems arise.

Sponsor approvals and assurance

21. The Project Delivery Agreement requires Sponsor approvals for milestones that have a significant financial impact or that could have a significant impact on the outcomes of the project. Where possible, independent reviews (e.g. Treasury's Gateway process) will be timed to coincide with Sponsor approval points to support the decisions of Sponsors.
22. The Project Delivery Agreement also stipulates the reasons for which Sponsors could withhold approval on any of the above matters (i.e. approvals do not grant unfettered rights) to circumstances where they consider the company is not delivering against the Sponsors' requirements. This ensures that Sponsors are not interfering with how the company is delivering against its mandate.
23. This approach vests project delivery with City Rail Link Limited, with it being primarily and solely accountable for project outcomes. Sponsors would be heavily reliant on City Rail Link Limited to provide confidence in its ability to deliver the project. Sponsors will also have an additional level of assurance through independent assurance advisers. These advisers will be appointed by Sponsors to work with City Rail Link Limited, allowing them to raise concerns regularly with Sponsors .

Notification events

24. The Project Delivery Agreement provides for Sponsors to be notified and have recourse to specified actions if:
 - 24.1. there is an adverse event (natural disaster or other force majeure event).
 - 24.2. City Rail Link Limited fails to comply with a material undertaking.
 - 24.3. a project milestone is missed or expected to be missed by a specified number of months.
 - 24.4. forecast project cost exceeds certain thresholds. Note this is related to forecast project cost as it would allow Sponsors to intervene when it appears that the cost is likely to exceed a threshold and not just when the cost has already exceeded the threshold.
25. The notification actions include the right to request a remedial action plan from City Rail Link Limited that proposes how it wishes to address the notification event and/or appoint a Board observer.
26. This model imitates the one adopted for the Crossrail project in London by providing specific points at which Sponsors can act where the forecast costs and delivery schedule appear to trigger agreed thresholds.
27. We are seeking a delegation to determine the appropriate thresholds. At this stage, our preference is for three points with increasing rights of interventions ranging from

being able to demand a remedial action plan, to being able to put an observer on the Board, to being able to replace directors.

Structure for decision-making with Auckland Council

28. The Sponsors' Agreement sets out the structure for Sponsor decision-making as proposed in Appendix 1.
29. At officials' level, the Sponsors' Forum would act as the top level oversight body for the project where Sponsors deliberate major project decisions and can hold City Rail Link Limited to account.
30. Crown officials and Auckland Council officers would sit on this forum and operate either under delegation from decision-makers or with a pre-approved mandate they have tested with decision-makers prior to forum meetings.
31. At this stage, we do not intend to delegate decision-making to Crown officials but may do so if, during the life of the project, it appears that a delegation is appropriate either for matters that have limited impact or for expediency.

Mechanisms for addressing disputes

Non-funding disputes

32. Crown officials looked into several options for dispute and deadlock mechanisms. However, these mechanisms are generally used in joint ventures where the asset/service in question is profit-yielding. Given the City Rail Link "asset" can be more appropriately classified as a public good, our options for dispute and deadlock resolution are limited. Mechanisms such as arbitration where the decision is vested in a third-party are also impractical where the matter for decision has funding implications.
33. Therefore, we are proposing that in the Sponsors' Agreement any dispute or deadlock should be escalated, first to Chief Executive level and then to Ministerial and Mayoral/Councillor level. Where there is a failure to agree to a decision sought by City Rail Link Limited, this is deemed to be a rejection, to provide certainty for the company while Sponsors are working through the dispute and deadlock resolution procedure. This will also create an incentive for Sponsors to reach an agreement and avoid the cost of delay to City Rail Link Limited's activities.

Failure to fund

34. Sponsors will need a mechanism to address failure by either Sponsor to meet its funding obligations. There is a risk, albeit small, that, given Auckland Council's funding constraints, it may be unable or unwilling to meet its share of the cost of the project at a future date.
35. We consider that the Sponsors' Agreement needs to deal with this scenario by providing a mechanism for City Rail Link Limited to remain in funds and meet its obligations to third party contractors. We also need a mechanism for either Sponsor to

elect to meet the funding obligations of the other Sponsor and have the ability to recover such funding.

36. The agreements therefore provide for an automatic debt to be established from the defaulting sponsor to City Rail Link Limited, which can be taken over by the non-defaulting sponsor in return for settling the debt. The debt would then be from the defaulting sponsor to the non-defaulting sponsor. The debt would be subject to default interest and normal security arrangements (applies only if the Council is the defaulting sponsor).

Ultimate ownership and operation of the City Rail Link

37. The ownership arrangements for the City Rail Link asset once completed are intrinsically linked to the optimal rail operating model for the Auckland rail network. The final ownership arrangements for the City Rail Link should reflect the way rail services are operated in Auckland.
38. While the City Rail Link is being built, the ownership of the assets will be vested in City Rail Link Limited.
39. The onus will be on the Sponsors to agree appropriate arrangements before completion of the project, as without an agreement on this matter, City Rail Link Limited will carry on owning the assets in perpetuity. This is unlikely to be a desirable outcome as City Rail Link Limited would need to negotiate complex contracts and interoperability arrangements with KiwiRail, Auckland Transport and the service provider (currently Transdev) to operate the respective assets. The Crown and Auckland Council would also need to agree appropriate funding arrangements for City Rail Link Limited, without which the assets would not be capable of being operated.
40. The Sponsors' Agreement includes a commitment from both Crown and Council to agree the ultimate arrangements for ownership and operation of the City Rail Link asset, and/or a default arrangement, no later than the award of contracts for the main tunnels and stations works and the linework systems (track and signalling) works. This is currently scheduled to occur around September 2018.

Overview of the contractual arrangements

Project Delivery Agreement

41. The Project Delivery Agreement is the primary mechanism through which the Sponsors will interact with City Rail Link Limited. It sets out the rights and obligations of both parties, including on matters such as funding, governance and risk management.
42. The main principle established through the Project Delivery Agreement is that City Rail Link Limited will be primarily and solely responsible for delivering the project, with the Crown and Auckland Council having a limited suite of oversight mechanisms to satisfy themselves on the progress of the project and the ability of City Rail Link Limited to deliver it, and to respond to changes in cost, time, scope and risk.

43. Crown officials have agreed the key terms of the Project Delivery Agreement with Auckland Council officers and City Rail Link Limited Chair, Sir Brian Roche as outlined below. We are seeking Cabinet approval for Ministers to oversee agreement to the detailed terms of the Project Delivery Agreement for signing.
44. The Project Delivery Agreement has the following main terms:

Table 2 – Outline of the Project Delivery Agreement

Section	Description
<i>City Rail Link Limited's obligations</i>	Scope. Sets out the scope of the City Rail Link project, in physical and functional terms, and the parameters the Sponsors require City Rail Link to be delivered against, which focus on the technical standards of the City Rail Link infrastructure. Commercial and residential development is out of scope but, once built, the City Rail Link should be capable of supporting development.
	Delivery strategy. Requires City Rail Link Limited to develop a delivery strategy for the project in terms of procurement, insurance, risk allocation, interface management, completion, and handover.
	Approvals. Sets out the points at which Sponsors' approval will be required, including approval of tender documentation for specified contracts, major transactions in relation to all the main contracts, approval of key delivery strategy components and variations thereof, and approval of dispute settlements.
<i>City Rail Link Limited's rights</i>	Funding. Describes how City Rail Link Limited will be funded. City Rail Link Limited receives funding on demand, up to the limit of uncalled capital (to be set at \$3,400 million).
<i>Sponsors' obligations</i>	Funding. Requires Sponsors to provide funding on demand against cashflow projections, up to the limit of uncalled capital. Sponsors will have other levers to address the performance of the company without interrupting funding for the project and risking placing City Rail Link Limited in breach under its contractual commitments.
	Handover. Requires Sponsors to advise to whom the City Rail Link Limited's assets should be transferred, no later than the award of contracts for the main tunnels and stations works and the linewide systems (track and signalling) works, currently scheduled to occur around September 2018.
<i>Sponsors' rights</i>	Assurance. Sponsors will have a right to monitor the project, undertake reviews at certain defined points and receive all required information. Sponsors will also appoint independent technical advisers to act as their agents and brief them on the progress of the project against key objectives. The assurance advisers will have full access to all of the City Rail Link Limited's activities, deliberations and documents.
	Notification events. Sponsors will have a right to be notified of major forecast or actual variations to cost and time, and have recourse to specified actions, including requiring development of a remedial action plan by City Rail Link Limited, being able to appoint an observer on the Board and being able to replace directors.
	Funding. Sponsors will receive shares in return for cash paid and will have the right to undertake audits to check that moneys have only been used for the purposes of the project.

Section	Description
<i>Main boilerplate provisions</i>	These provisions would be common in any agreement of this nature and include the right to audit the company, provisions in the event of adverse events and termination, rights in the event of termination, provisions around confidentiality and intellectual property and dispute resolution.

Sponsors' Agreement

45. The Sponsors' Agreement stipulates how both Sponsors will work together to provide governance for the City Rail Link project, describes the funding covenant and documents commitments to policy objectives that relate to, but extend beyond, the City Rail Link project.
46. The main principle established through the Sponsors' agreement is that Sponsors will work together and make decisions on an equal basis, providing 'one voice' to the company on project matters.
47. Crown officials have agreed the key terms of the Sponsors' Agreement with Auckland Council officers as outlined below. We are seeking Cabinet approval for Ministers to oversee agreement to the detailed terms of the Sponsors' Agreement for signing, including any provisions for failures to fund as discussed in paragraphs 37 and 38 above.

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48. The Sponsors' Agreement has the following main terms:

Table 3 – Outline of the Sponsors' Agreement

Section	Description
<i>Sponsors' relationship</i>	Objectives. Sets out the objectives of the Crown and Auckland Council in relation to the City Rail Link project (including costs, time, scope and risk).
	Independence. Crown and Auckland Council powers and functions remain independent.
	Communications. Sponsors will ensure that they consult each other and inform City Rail Link Limited prior to making public statements about the project or the company.
<i>Funding</i>	Early works costs. As per the Heads of Agreement, the Crown will provide funding to Auckland Council for 50 per cent of costs and any future variations that it could reasonably be expected to meet given it was not party to the early works contracts entered into prior to Crown involvement.
	Default. Sponsors will need a mechanism to address failure by either Sponsor to meet its funding obligations.
<i>Sponsors' Forum</i>	Representation. Crown officials and Auckland Council officers will sit on the Sponsors' Forum. On the Crown's side, this will require officials to test decisions with Ministers prior to Sponsors' Forum meetings.
	Decision-making. Each Sponsor can decide who will be able to make decisions on its behalf within the timeframes set out in the Project Delivery Agreement. Ministers may choose to delegate decision-making authority where appropriate.
	Dispute and deadlock resolution. Any failure to agree between Sponsors will be escalated, first to Chief Executive level and then to Ministerial and Councillor level. Where there is a failure to agree to a decision sought by City Rail Link Limited, this is deemed to be a rejection for the purpose of the company while the issue is being worked through the dispute resolution procedure.
<i>Ultimate ownership and operation of the City Rail Link</i>	Sponsors will need to agree the ultimate arrangements for ownership and operation of the City Rail Link asset, and/or a default arrangement, no later than the award of contracts for the main tunnels and stations works and the linework systems (track and signalling) works, currently scheduled to occur around September 2018. Failure to agree would be worked through under the dispute and deadlock resolution procedure.
<i>Wider policy objectives</i>	Commercial and residential developments. We may seek to have a process for ensuring that Auckland optimises the development opportunities created by the City Rail Link.
	Value capture. We may seek to ensure that Auckland Council reviews opportunities for value capture as part of business cases for significant infrastructure projects in the future.
	Review of metro rail model. The Crown will lead a review of the metro rail planning, funding and operating arrangements looking at options for greater integration of rail operations and the opportunity/ implications of shared funding for metro rail track and associated infrastructure in Auckland to provide stronger incentives for prioritising rail investments alongside other transport investments that are funded on a shared basis. The review will also feed into decisions around the ultimate ownership and operating arrangements for the City Rail Link.

Other matters to note

City Rail Link Limited's tax obligations

49. There appears to be an issue with the tax status of City Rail Link Limited as a Schedule 4A company under the Public Finance Act 1989 as Inland Revenue does not grant "public authority" status to Schedule 4A companies. This would mean that City Rail Link would have to pay GST and income tax and would increase the cost of the project but would be matched by a corresponding increase in tax revenue. Auckland Transport is a public authority and has not had to pay GST on project costs to date.
50. As the issue is common to other Schedule 4A companies, the Treasury is working through the issue and developing legislative proposals that would deem certain Schedule 4A companies to be public authorities, where appropriate. In the interim, we will need a measure to alleviate the tax burden for City Rail Link Limited and by extension, Auckland Council.
51. The Project Delivery Agreement proposes that the Crown reimburse City Rail Link Limited and Auckland Council for any GST incurred.

Timing for City Rail Link Limited to assume project responsibility

52. The Project Delivery Agreement includes certain conditions that need to be satisfied prior to it coming into effect. These conditions will also need to be satisfied prior to Crown funding coming into effect:
 - 52.1. execution of an asset transfer agreement between Auckland Transport and City Rail Link Limited, in a form satisfactory to and approved by the Sponsors. We have made it clear that the Crown expects a clean transfer from Auckland Transport of all assets that City Rail Link Limited will require to deliver the City Rail Link project. This is an area where Auckland Transport will need to provide its full support to ensure an effective transfer and is a key priority for City Rail Link Limited Chair, Sir Brian Roche. This is also dependent on the time needed for City Rail Link Limited to be approved as a requiring authority under the Resource Management Act 1991 so that it can hold the relevant land designations for the project.
 - 52.2. execution of an Order in Council under section 3AB of the Public Finance Act 1989 providing that City Rail Link Limited is listed in Schedule 4A of that Act (already satisfied)
 - 52.3. execution of an agreement providing for an appropriate arrangement for support from Auckland Transport, that sets out the rights and obligations of both parties with respect to delivery of the City Rail Link in a way that integrates with the regions wider transport network.

- 52.4. adoption of a revised company constitution; a basic constitution has been adopted while the Project Delivery Agreement is negotiated and when that agreement is finalised, a revised constitution will need to be adopted to reflect the final terms of the agreement.
53. Until the above conditions are met, the Heads of Agreement continues to govern project delivery arrangements unless Sponsors agree otherwise. Auckland Council are working on transitional project delivery arrangements should there be a slight delay between the Project Delivery Agreement being signed and any of the conditions precedent above being satisfied to allow City Rail Link Limited to assume responsibility for the project.
54. There are several other matters that will need to be in place as soon as possible after City Rail Link is operational to ensure it is fully equipped to deliver the project and that all statutory requirements are satisfactorily fulfilled:
- 54.1. execution of a delivery partner agreement between Auckland Transport and City Rail Link Limited, as described above, in a form satisfactory to and approved by the Sponsors.
 - 54.2. execution of a delivery partner agreement between KiwiRail and City Rail Link Limited that sets out the rights and obligations of both parties with respect to delivery of the City Rail Link in a way that integrates with the wider rail network.
 - 54.3. execution of a Deed of Settlement that confirms all necessary transfers and payments to bring the Project Delivery Agreement into effect are complete.
 - 54.4. execution of an Order in Council under section 7 of the Local Government Act 2002 exempting City Rail Link Limited from being a council-controlled organisation.
55. Appointments of the remaining directors for City Rail Link Limited are near complete, with Auckland Council having approved the nominees and the Cabinet Appointment and Honours Committee having considered a paper on 20 June 2017.

Next steps

56. There are a small number of points of contention remaining in the Sponsors' Agreement that Crown officials and Auckland Council officers are continuing to work through. The Project Delivery Agreement will also need to be finalised and detailed drafting issues are more than likely to come up. We are seeking a delegation for the Minister of Finance and the Minister of Transport to oversee these discussions and finalise both agreements in line with the key terms outlined in this paper.
57. Once both agreements come into effect, the Crown will need to appoint representatives to perform its duties under the terms of those agreements. We are seeking authorisation from Cabinet for the Minister of Finance and the Minister of Transport to perform those functions and to sub-delegate that authority where they deem appropriate.

Consultation

58. Consultation with other agencies was not necessary in the development of this paper. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

Capital Expenditure

59. As part of Budget 2017, Cabinet [CAB-17-MIN-0185.29 refers]:
- 59.1. committed to fund up to \$1,718 million for the Crown's contribution to the Auckland City Rail Link project, which was based on a net project cost of \$3,437 million;
 - 59.2. established the 'Auckland City Rail Link' appropriation of \$436 million for 2017/18;
 - 59.3. delegated authority to the Minister of Finance and Minister of Transport to make changes to the expenditure profile, to provide flexibility to adjust this if required by the timing of payments to City Rail Link Limited established to deliver the City Rail Link project; and
 - 59.4. agreed to pre-commit the remaining \$1,282 million of the Crown's contribution against Budgets 2018 to 2020.
60. The timing of when further funding will be required will be determined through the finalisation of the Project Delivery and Sponsors' Agreements, and by the timing of payments to City Rail Link Limited.
61. Funding will be provided to City Rail Link Limited on a quarterly basis, in the form of a capital injection, with the company providing a funding request to both Sponsors. The Ministry of Transport will be responsible for approving these requests provided they comply with the necessary provisions of the Project Delivery Agreement.
62. While the City Rail Link is being built, the ownership of the assets will be vested in City Rail Link Limited. Before completion of the project final ownership arrangements for the City Rail Link will be agreed by the Crown and Auckland Council. Should there be agreement to assets transferring out of Crown ownership, there would be an equivalent impact on the Crown's financial statements.

Operating Expenditure

63. Budget 2017 also provided \$1 million per annum of operating expenditure to the Ministry of Transport until 2023/24. This funding will support the Ministry of Transport to monitor the City Rail Link project and provide reports to joint Ministers on progress and any risks that may arise.

Human rights, gender, disability, legislative implications and Regulatory Impact Analysis

64. There are no human rights, gender, disability, or legislative implications arising from this paper. A Regulatory Impact Analysis is not required.

Publicity

65. We will work with the Mayor of Auckland on any possible public announcement around the signing of the Sponsors' and Project Delivery Agreements.

Recommendations

66. The Minister of Finance and the Minister of Transport jointly recommend that the Committee:

Background

1. **note** that on 12 September 2016, Cabinet authorised the then Associate Minister of Finance and Minister of Transport to sign a Heads of Agreement on behalf of the Crown that set out an in-principle commitment to funding the City Rail Link project in Auckland on an equal basis with Auckland Council, subject to agreeing appropriate arrangements around the funding, governance and risk management of the project [CAB-16-MIN-0462 refers]
2. **note** that principal among the terms of the Heads of Agreement was an agreement to establish an independent Special Purpose Vehicle to deliver the City Rail Link (City Rail Link Limited), working with Auckland Transport, KiwiRail and others as necessary
3. **note** that since the Heads of Agreement was signed, we have overseen negotiation of comprehensive contractual arrangements that will give effect to the terms of the Heads of Agreement:
 - a Project Delivery Agreement that will govern the relationship between City Rail Link Limited and its Sponsors (the Crown and Auckland Council); and
 - a Sponsors' Agreement that will govern the relationship between the Crown and Auckland Council as joint Sponsors and funders of the City Rail Link.
4. **note** that Crown officials, Auckland Council officers and Sir Brian Roche, City Rail Link Limited Chair, have reached alignment on most of the key terms of the Project Delivery Agreement and Sponsors' Agreement

Scope and size of the Crown's funding commitment and financial implications

5. **note** that at Budget 2017 Cabinet committed to fund up to \$1,718 million for the Crown's contribution to the Auckland City Rail Link project, which was based on a net project cost of \$3,437 million

6. **note** that at Budget 2017 Cabinet established an appropriation for 2017/18 of \$436 million and agreed to pre-commit the remaining \$1,282 million of the Crown's contribution against Budgets 2018 to 2020
7. **note** that the Crown's funding commitment in the Project Delivery Agreement and Sponsors' Agreement will be \$1,718 million, reflecting the net project cost in recommendation 5 above
8. **note** that the Crown Funding Commitment may need to increase to account for timing issues around the proceeds of land sales, given that these will occur at the end of the City Rail Link project
9. **note** that City Rail Link Limited will be tasked with delivering a target cost below the gross project cost, likely to be set at the net P50 cost estimate of \$3,372 million that assumes a 50 per cent probability that this cost will not be exceeded
10. **agree** that funding will be provided to City Rail Link Limited on a quarterly basis, in the form of a capital injection, with the company providing a funding request to both Sponsors.
11. **note** that the Ministry of Transport will be responsible for approving these requests provided the requests comply with the necessary provisions of the Project Delivery Agreement

Management of the Crown's funding commitment

12. **note** that for the Crown to ensure that its funding is providing value for money it will need to specify a range of levers in the Project Delivery Agreement including around reporting, monitoring, approvals and assurance
13. **agree** the Project Delivery Agreement will set out the points at which Sponsors' approval will be required, including approval of tender documentation for specified contracts, major transactions in relation to all the main contracts, approval of the delivery strategy components and variations thereof, and approval of dispute settlements
14. **agree** that the Project Delivery Agreement will set out the rights of Sponsors to be notified of major forecast or actual variations to cost and time, and have recourse to specified actions, including requiring development of a remedial action plan by City Rail Link Limited
15. **agree** that the Minister of Finance and the Minister of Transport will determine appropriate thresholds for the notification events and approval points in the Project Delivery Agreement

Structure for decision-making with Auckland Council

16. **agree** that Crown officials and Auckland Council officers will represent Sponsors on a Sponsors' Forum that coordinates and communicates decisions needed under the Sponsors' Agreement and Project Delivery Agreement. On

the Crown's side, this will require officials to test decisions with Ministers prior to Sponsors' Forum meetings

17. **agree** that each Sponsor will have autonomy to decide who will be able to make decisions on its behalf, allowing Ministers to delegate authority where they deem appropriate

Mechanisms for addressing disputes

18. **agree** that the Sponsors' Agreement provides for escalation of non-funding disputes to senior officials in the first instance, followed by Ministers/Mayor/Councillors where a Sponsor has not fulfilled its obligations to the other Sponsor or for any failure to agree
19. **agree** that funding default by one sponsor should result in an automatic debt subject to default interest and normal security

Ultimate ownership and operation of the City Rail Link

20. **agree** that the Sponsors' Agreement require Sponsors to agree the ultimate arrangements for ownership and operation of the City Rail Link asset, and/or a default arrangement, no later than the award of contracts for the main tunnels and stations works and the linewide systems (track and signalling) works, currently scheduled to occur around September 2018

Project Delivery Agreement

21. **agree** that the Project Delivery Agreement vests responsibility for delivering the City Rail Link Project solely and primarily with City Rail Link Limited, with the Crown and Auckland Council having a limited suite of oversight mechanisms to satisfy themselves on the progress of the project and the ability of City Rail Link Limited to deliver it
22. **agree** that the key terms of the Project Delivery Agreement will include, in addition to the terms described above:
 - setting out the scope of the City Rail Link project, in physical and functional terms, and the parameters the Sponsors require City Rail Link to be delivered against
 - requiring City Rail Link Limited to develop a delivery strategy for the project in terms of procurement, insurance, risk allocation, interface management, completion, and handover
 - provision for uncalled capital of \$3,400 million, to be drawn down by the company against cash flow forecasts
 - setting out the rights of Sponsors to receive shares in return for cash paid and to undertake audits to check that moneys have only been used for the purposes of the project.

Sponsors' Agreement

23. **agree** that the Sponsors' Agreement reflect the intent of Sponsors to work together and make decisions on an equal basis, providing 'one voice' to the company on project matters
24. **agree** that the key terms of the Sponsors' Agreement will include, in addition to the terms described above:
- setting out the objectives of the Crown and Auckland Council in relation to the City Rail Link project (around costs, time and scope)
 - requiring Sponsors to consult each other and inform City Rail Link Limited prior to making public statements about the project or the company
 - reflecting the principle that the Crown will provide funding for 50 per cent of the costs and any future variations of the early works contracts entered into prior to Crown involvement that are reasonable and not due to the negligence of Auckland Council and/or Auckland Transport
25. **agree** that the Minister of Finance and the Minister of Transport consider whether and how the Sponsors' Agreement addresses development opportunities created by the City Rail Link and consideration of the potential for value capture as part of future infrastructure projects in Auckland

Tax treatment

26. **note** that City Rail Link Limited could be required to pay GST and income tax
27. **agree** that the Project Delivery Agreement should provide for the Crown to reimburse Auckland Council and City Rail Link Limited for any tax incurred if necessary
28. **note** that the City Rail Link Limited payment of GST and income tax is not included in the gross cost estimate for the project, and any additional funding required will need to be appropriated and managed against Budget allowances
29. **note** that the Ministry of Transport and Treasury will continue to work through City Rail Link Limited's GST and income tax requirements and report back to the Minister of Finance and Minister of Transport with a proposal for managing this

Timing for City Rail Link Limited to assume project responsibilities

30. **note** that the Project Delivery Agreement includes certain conditions that need to be satisfied prior to it coming into effect and these conditions are also required prior to Crown funding coming into effect:
- execution of a transfer agreement between Auckland Transport and City Rail Link Limited, in a form satisfactory to and approved by the Sponsors

- execution of an agreement providing for an appropriate arrangement for support from Auckland Transport, that sets out the rights and obligations of both parties with respect to delivery of the City Rail Link in a way that integrates with the regions wider transport network
 - adoption of a revised company constitution
 - obtaining an Order in Council under section 3AB of the Public Finance Act 1989 providing that City Rail Link Limited is listed in Schedule 4A of that Act (already satisfied)
31. **note** that until the conditions precedent above are met, the Heads of Agreement continues to govern project delivery arrangements unless Sponsors agree otherwise
32. **note** that work to establish City Rail Link Limited to be in a position to deliver the project includes the appointment of the remaining directors and completion of an application for City Rail Link Limited to be a requiring authority under the Resource Management Act 1991
33. **note** that there are several other matters that will need to be in place as soon as possible after City Rail Link Limited is operational to ensure it is fully equipped to deliver the project and that all statutory requirements are satisfactorily fulfilled, namely agreements between City Rail Link Limited and each of Auckland Transport and KiwiRail, a Deed of Settlement, and execution of an Order in Council under section 7 of the Local Government Act 2002 exempting City Rail Link Limited from being a council-controlled organisation

Further work following Cabinet decisions

34. **note** that following Cabinet decisions, the Minister of Finance and the Minister of Transport will continue to oversee development and finalisation of the Project Delivery Agreement and Sponsors' Agreement to reflect the key terms agreed by Cabinet

Delegated authority for Ministers

35. **authorise** the Minister of Finance and the Minister of Transport to finalise and sign the Project Delivery Agreement and Sponsors' Agreement on behalf of the Crown
36. **authorise** the Minister of Finance and the Minister of Transport to perform the duties of the Crown as a Sponsor under the Project Delivery Agreement and Sponsors' Agreement, and to sub-delegate authority to perform those duties where appropriate

Publicity

37. **note** that the Minister of Finance and the Minister of Transport will work with the Mayor of Auckland on any possible publicity at the time of the signing of the Project Delivery Agreement and Sponsors' Agreement.

Hon Steven Joyce
Minister of Finance

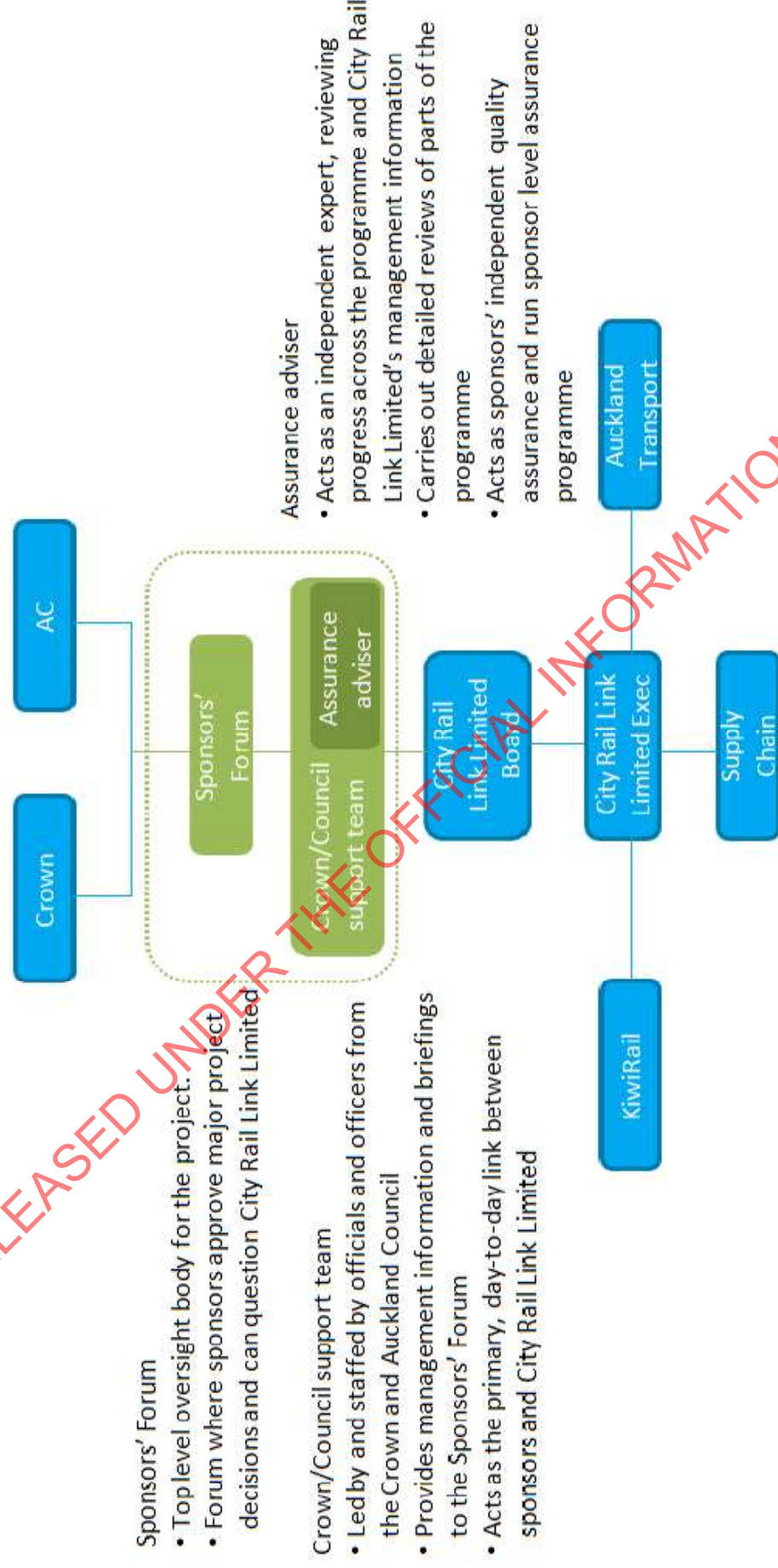
Dated: _____

Hon Simon Bridges
Minister of Transport

Dated: _____

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Appendix 1 – Proposed governance regime





Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Auckland City Rail Link Governance And Funding Arrangements

Portfolios

Finance / Transport

On 26 June 2017, the Cabinet:

Background

- 1 **noted** that on 12 September 2016, Cabinet authorised the Minister of Finance and the Minister of Transport to sign a Heads of Agreement on behalf of the Crown that set out an in-principle commitment to funding the City Rail Link project in Auckland on an equal basis with Auckland Council, subject to agreeing appropriate arrangements around the funding, governance and risk management of the project [CAB-16-MIN-0462];
- 2 **noted** that principal among the terms of the Heads of Agreement was an agreement to establish an independent Special Purpose Vehicle to deliver the City Rail Link (City Rail Link Limited), working with Auckland Transport, KiwiRail and others as necessary;
- 3 **noted** that since the Heads of Agreement was signed, the Ministers of Finance and Transport have overseen the negotiation of comprehensive contractual arrangements that will give effect to the terms of the Heads of Agreement:
 - 3.1 a Project Delivery Agreement that will govern the relationship between City Rail Link Limited and its Sponsors (the Crown and Auckland Council);
 - 3.2 a Sponsors' Agreement that will govern the relationship between the Crown and Auckland Council as joint Sponsors and funders of the City Rail Link;
- 4 **noted** that Crown officials, Auckland Council officers and Sir Brian Roche (the Chair of City Rail Link Limited) have reached alignment on most of the key terms of the Project Delivery Agreement and Sponsors' Agreement;

Scope and size of the Crown's funding commitment and financial implications

- 5 **noted** that at Budget 2017, Cabinet committed to fund up to \$1,718 million for the Crown's contribution to the Auckland City Rail Link project, which was based on a net project cost of \$3,437 million [CAB-17-MIN-0185.29];
- 6 **noted** that at Budget 2017, Cabinet established an appropriation for 2017/18 of \$436 million, and agreed to pre-commit the remaining \$1,282 million of the Crown's contribution against Budgets 2018 to 2020 [CAB-17-MIN-0185.29 and CAB-17-MIN-0243];

- 7 **noted** that the Crown's funding commitment in the Project Delivery Agreement and Sponsors' Agreement will be \$1,718 million, reflecting the net project cost referred to in paragraph 5 above;
- 8 **noted** that the Crown Funding Commitment may need to increase to account for timing issues around the proceeds of land sales, given that these will occur at the end of the City Rail Link project;
- 9 **noted** that City Rail Link Limited will be tasked with delivering a target cost below the gross project cost, likely to be set at the net P50 cost estimate of \$3,372 million that assumes a 50 percent probability that this cost will not be exceeded;
- 10 **agreed** that funding be provided to City Rail Link Limited on a quarterly basis, in the form of a capital injection, with the company providing a funding request to both Sponsors;
- 11 **noted** that the Ministry of Transport will be responsible for approving these requests, provided the requests comply with the necessary provisions of the Project Delivery Agreement;

Management of the Crown's funding commitment

- 12 **noted** that for the Crown to ensure that its funding is providing value for money, it will need to specify a range of levers in the Project Delivery Agreement, including around reporting, monitoring, approvals and assurance;
- 13 **agreed** that the Project Delivery Agreement will set out the points at which Sponsors' approval will be required, including approval of tender documentation for specified contracts, major transactions in relation to all the main contracts, approval of the delivery strategy components and variations thereof, and approval of dispute settlements;
- 14 **agreed** that the Project Delivery Agreement will set out the rights of Sponsors to be notified of major forecast or actual variations to cost and time, and have recourse to specified actions, including requiring the development of a remedial action plan by City Rail Link Limited;
- 15 **authorised** the Minister of Finance and the Minister of Transport to determine appropriate thresholds for the notification events and approval points in the Project Delivery Agreement;

Structure for decision-making with Auckland Council

- 16 **agreed** that Crown officials and Auckland Council officers will represent Sponsors on a Sponsors' Forum that coordinates and communicates decisions needed under the Sponsors' Agreement and Project Delivery Agreement. On the Crown's side, this will require officials to test decisions with Ministers prior to Sponsors' Forum meetings;
- 17 **agreed** that each Sponsor will have autonomy to decide who will be able to make decisions on its behalf, allowing Ministers to delegate authority where they deem appropriate;

Mechanisms for addressing disputes

- 18 **agreed** that the Sponsors' Agreement provides for escalation of non-funding disputes to senior officials in the first instance, followed by Ministers/Mayor/Councillors where a Sponsor has not fulfilled its obligations to the other Sponsor or for any failure to agree;
- 19 **agreed** that funding default by one Sponsor should result in an automatic debt subject to default interest and normal security;

Ultimate ownership and operation of the City Rail Link

- 20 **agreed** that the Sponsors' Agreement require Sponsors to agree the ultimate arrangements for ownership and operation of the City Rail Link asset, and/or a default arrangement, no later than the award of contracts for the main tunnels and stations works and the linewide systems (track and signalling) works, currently scheduled to occur around September 2018;

Project Delivery Agreement

- 21 **agreed** that the Project Delivery Agreement vest responsibility for delivering the City Rail Link Project solely and primarily with City Rail Link Limited, with the Crown and Auckland Council having a limited suite of oversight mechanisms to satisfy themselves on the progress of the project and the ability of City Rail Link Limited to deliver it;
- 22 **agreed** that the key terms of the Project Delivery Agreement will include, in addition to the terms described above:
- 22.1 setting out the scope of the City Rail Link project, in physical and functional terms, and the parameters the Sponsors require City Rail Link to be delivered against;
 - 22.2 requiring City Rail Link Limited to develop a delivery strategy for the project in terms of procurement, insurance, risk allocation, interface management, completion, and handover;
 - 22.3 provision for uncalled capital of \$3,400 million, to be drawn down by the company against cash flow forecasts;
 - 22.4 setting out the rights of Sponsors to receive shares in return for cash paid and to undertake audits to check that moneys have only been used for the purposes of the project;

Sponsors' Agreement

- 23 **agreed** that the Sponsors' Agreement reflect the intent of Sponsors to work together and make decisions on an equal basis, providing 'one voice' to the company on project matters;
- 24 **agreed** that the key terms of the Sponsors' Agreement will include, in addition to the terms described above:
- 24.1 setting out the objectives of the Crown and Auckland Council in relation to the City Rail Link project (around costs, time and scope);
 - 24.2 requiring Sponsors to consult each other and inform City Rail Link Limited prior to making public statements about the project or the company;
 - 24.3 reflecting the principle that the Crown will provide funding for 50 percent of the costs and any future variations of the early works contracts entered into prior to Crown involvement that are reasonable and not due to the negligence of Auckland Council and/or Auckland Transport;
- 25 **authorised** the Minister of Finance and the Minister of Transport to consider whether and how the Sponsors' Agreement addresses development opportunities created by the City Rail Link and consideration of the potential for value capture as part of future infrastructure projects in Auckland;

Tax treatment

- 26 **noted** that City Rail Link Limited could be required to pay GST and income tax;
- 27 **agreed** that the Project Delivery Agreement should provide for the Crown to reimburse Auckland Council and City Rail Link Limited for any tax incurred if necessary;
- 28 **noted** that the City Rail Link Limited payment of GST and income tax is not included in the gross cost estimate for the project, and that any additional funding required will need to be appropriated and managed against Budget allowances;
- 29 **noted** that the Ministry of Transport and Treasury will continue to work through City Rail Link Limited's GST and income tax requirements, and will report back to the Minister of Finance and the Minister of Transport with a proposal for managing this;

Timing for City Rail Link Limited to assume project responsibilities

- 30 **noted** that the Project Delivery Agreement includes certain conditions that need to be satisfied prior to it coming into effect, and that these conditions are also required prior to Crown funding coming into effect:
- 30.1 execution of a transfer agreement between Auckland Transport and City Rail Link Limited, in a form satisfactory to and approved by the Sponsors;
 - 30.2 execution of an agreement providing for an appropriate arrangement for support from Auckland Transport, that sets out the rights and obligations of both parties with respect to delivery of the City Rail Link in a way that integrates with the regions wider transport network;
 - 30.3 adoption of a revised company constitution;
 - 30.4 obtaining an Order in Council under section 3AB of the Public Finance Act 1989 providing that City Rail Link Limited is listed in Schedule 4A of that Act (already satisfied, LEG-17-MIN-0055);
- 31 **noted** that until the conditions precedent above are met, the Heads of Agreement continues to govern project delivery arrangements, unless the Sponsors agree otherwise;
- 32 **noted** that work to establish City Rail Link Limited as being in a position to deliver the project includes the appointment of the remaining directors and the completion of an application for City Rail Link Limited to be a requiring authority under the Resource Management Act 1991;
- 33 **noted** that there are several other matters that will need to be in place as soon as possible after City Rail Link Limited is operational to ensure it is fully equipped to deliver the project and that all statutory requirements are satisfactorily fulfilled, namely:
- 33.1 agreements between City Rail Link Limited and each of Auckland Transport and KiwiRail;
 - 33.2 a Deed of Settlement;
 - 33.3 execution of an Order in Council under section 7 of the Local Government Act 2002 exempting City Rail Link Limited from being a council-controlled organisation;

Further work

- 34 **noted** that following Cabinet decisions, the Minister of Finance and the Minister of Transport will continue to oversee the development and finalisation of the Project Delivery Agreement and Sponsors' Agreement to reflect the key terms agreed by Cabinet;

Delegated authority for Ministers

- 35 **authorised** the Minister of Finance and the Minister of Transport to finalise and sign the Project Delivery Agreement and Sponsors' Agreement on behalf of the Crown;
- 36 **authorised** the Minister of Finance and the Minister of Transport to perform the duties of the Crown as a Sponsor under the Project Delivery Agreement and Sponsors' Agreement, and to sub-delegate authority to perform those duties where appropriate;

Publicity

- 37 **noted** that the Minister of Finance and the Minister of Transport will work with the Mayor of Auckland on any possible publicity at the time of the signing of the Project Delivery Agreement and Sponsors' Agreement.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Minister of Finance
Minister of Transport



Cabinet

Summary

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Auckland City Rail Link Governance and Funding Arrangements

Portfolios

Finance / Transport

Purpose

This paper seeks approval for the Minister of Finance and the Minister of Transport to finalise the governance and funding arrangements for City Rail Link Limited, the company that has been established to complete the construction of the City Rail Link project in Auckland.

Previous Consideration

On 12 September 2016, Cabinet approved the terms and conditions of the Crown's in-principle funding commitment to the Auckland City Rail Link, and authorised the Ministers of Finance and Transport to approve the documentation to bring this commitment into effect [CAB-16-MIN-0462].

In Budget 2017, Cabinet agreed to fund \$1.718 billion of the Crown's share of the total project costs for the Auckland City Rail Link project, and invited the Ministers of Finance and Transport to report back to Cabinet seeking agreement to the key terms of the Project Delivery and Sponsors' Agreements, and to the final amount of the Crown's contribution to the City Rail Link project [CAB-17-MIN-0185.29].

Summary

In September 2016, the government and Auckland Council signed a Heads of Agreement to guide the actions of both parties (together, the Sponsors) to set up arrangements for the funding, governance and risk management of the City Rail Link project.

There is now alignment on most of the key terms of the Project Delivery Agreement and the Sponsors' Agreement (summarised in paragraph 4). An overview of the contractual arrangements is in the tables in paragraphs 46 and 50. The proposed governance structure for Sponsor decision-making is in Appendix 1.

There may be an issue with the tax treatment for City Rail Link Limited, as it could be required to pay GST and income tax. It is hoped that a solution to this issue will be found over the next 12 months, but if this is not possible the Agreements allow for tax paid by Auckland Council and City Rail Link Limited to be reimbursed.

While the City Rail Link is being built, the ownership of the assets will be vested in City Rail Link Limited. The Sponsors' Agreement includes a commitment from both the Crown and Auckland Council to agree the ultimate arrangements for ownership and operation of the asset, and/or a default arrangement, no later than the award of contracts for the main tunnels and stations works, and the track and signalling works. This is currently scheduled to occur around September 2018.

Authority is sought for the Ministers of Finance and Transport to agree to the outstanding issues and to finalise the Project Delivery and Sponsors' Agreements for signing.

**Regulatory
Impact Analysis**

Not required.

**Baseline
Implications**

Agreement is sought to revise the Crown's funding commitment to the City Rail Link from \$1,718 million to \$1,868 million. This is based on a gross project cost of \$3,736 million (up from the project cost of \$3,437 million agreed at Budget 2017). City Rail Link Limited will be tasked with delivering a target cost below this overall figure, likely to be set at the P50 net cost estimate of \$3,372 million.

Any updates to cost estimates will be provided as part of Budget 2018.

Financial implications are discussed in paragraphs 61-67.

**Legislative
Implications**

None.

Timing Issues

The appointments of the remaining directors for City Rail Link Limited were considered by the Cabinet Appointments and Honours Committee on 20 June 2017 [APH-17-MIN-0148].

The parties are working to complete the legal agreements for the transfer of assets and staff from Auckland Transport to City Rail Link Limited by 1 July 2017.

Announcement

The Ministers of Finance and Transport will work with the Mayor of Auckland on any possible public announcement.

**Proactive
Release**

None.

Consultation

Paper prepared by Treasury and Transport. DPMC was informed.

The Ministers of Finance and Transport indicate that discussion is not required with the government caucus, or with other parties represented in Parliament.

The Minister of Finance and the Minister of Transport recommend that Cabinet:

Background

- 1 note that on 12 September 2016, Cabinet authorised the Minister of Finance and the Minister of Transport to sign a Heads of Agreement on behalf of the Crown that set out an in-principle commitment to funding the City Rail Link project in Auckland on an equal basis with Auckland Council, subject to agreeing appropriate arrangements around the funding, governance and risk management of the project [CAB-16-MIN-0462];

- 2 note that principal among the terms of the Heads of Agreement was an agreement to establish an independent Special Purpose Vehicle to deliver the City Rail Link (City Rail Link Limited), working with Auckland Transport, KiwiRail and others as necessary;
- 3 note that since the Heads of Agreement was signed, the Ministers of Finance and Transport have overseen the negotiation of comprehensive contractual arrangements that will give effect to the terms of the Heads of Agreement:
- 3.1 a Project Delivery Agreement that will govern the relationship between City Rail Link Limited and its Sponsors (the Crown and Auckland Council);
- 3.2 a Sponsors' Agreement that will govern the relationship between the Crown and Auckland Council as joint Sponsors and funders of the City Rail Link;
- 4 note that Crown officials, Auckland Council officers and Sir Brian Roche (the Chair of City Rail Link Limited) have reached alignment on most of the key terms of the Project Delivery Agreement and Sponsors' Agreement;

Scope and size of the Crown's funding commitment and financial implications

- 5 note that at Budget 2017, Cabinet committed to fund up to \$1,718 million for the Crown's contribution to the Auckland City Rail Link project, which was based on a net project cost of \$3,437 million [CAB-17-MIN-0185.29];
- 6 note that at Budget 2017, Cabinet established an appropriation for 2017/18 of \$436 million, and agreed to pre-commit the remaining \$1,282 million of the Crown's contribution against Budgets 2018 to 2020 [CAB-17-MIN-0185.29 and CAB-17-MIN-0243];
- 7 note that the Crown's funding commitment has been revised up from \$1,718 million to \$1,868 million;
- 8 note that the \$1,868 million figure referred to in paragraph 7 above is based on a gross project cost of \$3,736 million, which takes account of:
- 8.1 further costs associated with the operation and governance of City Rail Link Limited;
- 8.2 property transfer;
- 8.3 the exclusion of the proceeds of land sales, given that these will occur at the end of the City Rail Link project;
- 9 agree to fund \$1,868 million of the Crown's share of the total project costs for the City Rail Link project;
- 10 agree to revise the pre-commitment against Budgets 2018 to 2020 from the \$1,282 million agreed at Budget 2017 to \$1,432 million, reflecting the updated estimate of the Crown's share of the total project costs;
- 11 note that a further request for an appropriation will be made in Budget 2018, to draw on the pre-commitment referred to in paragraph 10 above;
- 12 note that the Pre-Election Economic and Fiscal Update will include the updated Crown funding commitment to the project of \$1,868 million;

- 13 note that City Rail Link Limited will be tasked with delivering a target cost below the gross project cost, likely to be set at the net P50 cost estimate of \$3,372 million that assumes a 50 percent probability that this cost will not be exceeded;
- 14 agree that funding be provided to City Rail Link Limited on a quarterly basis, in the form of a capital injection, with the company providing a funding request to both Sponsors;
- 15 note that the Ministry of Transport will be responsible for approving these requests, provided the requests comply with the necessary provisions of the Project Delivery Agreement;

Management of the Crown's funding commitment

- 16 note that for the Crown to ensure that its funding is providing value for money, it will need to specify a range of levers in the Project Delivery Agreement, including around reporting, monitoring, approvals and assurance;
- 17 agree that the Project Delivery Agreement will set out the points at which Sponsors' approval will be required, including approval of tender documentation for specified contracts, major transactions in relation to all the main contracts, approval of the delivery strategy components and variations thereof, and approval of dispute settlements;
- 18 agree that the Project Delivery Agreement will set out the rights of Sponsors to be notified of major forecast or actual variations to cost and time, and have recourse to specified actions, including requiring the development of a remedial action plan by City Rail Link Limited;
- 19 authorise the Minister of Finance and the Minister of Transport to determine appropriate thresholds for the notification events and approval points in the Project Delivery Agreement;

Structure for decision-making with Auckland Council

- 20 agree that Crown officials and Auckland Council officers will represent Sponsors on a Sponsors' Forum that coordinates and communicates decisions needed under the Sponsors' Agreement and Project Delivery Agreement. On the Crown's side, this will require officials to test decisions with Ministers prior to Sponsors' Forum meetings;
- 21 agree that each Sponsor will have autonomy to decide who will be able to make decisions on its behalf, allowing Ministers to delegate authority where they deem appropriate;

Mechanisms for addressing disputes

- 22 agree that the Sponsors' Agreement provides for escalation of non-funding disputes to senior officials in the first instance, followed by Ministers/Mayor/Councillors where a Sponsor has not fulfilled its obligations to the other Sponsor or for any failure to agree;
- 23 agree that funding default by one Sponsor should result in an automatic debt subject to default interest and normal security;

Ultimate ownership and operation of the City Rail Link

- 24 agree that the Sponsors' Agreement require Sponsors to agree the ultimate arrangements for ownership and operation of the City Rail Link asset, and/or a default arrangement, no later than the award of contracts for the main tunnels and stations works and the linewise systems (track and signalling) works, currently scheduled to occur around September 2018;

Project Delivery Agreement

- 25 agree that the Project Delivery Agreement vest responsibility for delivering the City Rail Link Project solely and primarily with City Rail Link Limited, with the Crown and Auckland Council having a limited suite of oversight mechanisms to satisfy themselves on the progress of the project and the ability of City Rail Link Limited to deliver it;
- 26 agree that the key terms of the Project Delivery Agreement will include, in addition to the terms described above:
- 26.1 setting out the scope of the City Rail Link project, in physical and functional terms, and the parameters the Sponsors require City Rail Link to be delivered against;
 - 26.2 requiring City Rail Link Limited to develop a delivery strategy for the project in terms of procurement, insurance, risk allocation, interface management, completion, and handover;
 - 26.3 provision for uncalled capital of \$3,736 million, to be drawn down by the company against cash flow forecasts;
 - 26.4 setting out the rights of Sponsors to receive shares in return for cash paid and to undertake audits to check that moneys have only been used for the purposes of the project;

Sponsors' Agreement

- 27 agree that the Sponsors' Agreement reflect the intent of Sponsors to work together and make decisions on an equal basis, providing 'one voice' to the company on project matters;
- 28 agree that the key terms of the Sponsors' Agreement will include, in addition to the terms described above:
- 28.1 setting out the objectives of the Crown and Auckland Council in relation to the City Rail Link project (around costs, time and scope);
 - 28.2 requiring Sponsors to consult each other and inform City Rail Link Limited prior to making public statements about the project or the company;
 - 28.3 reflecting the principle that the Crown will provide funding for 50 percent of the costs and any future variations of the early works contracts entered into prior to Crown involvement that are reasonable and not due to the negligence of Auckland Council and/or Auckland Transport;
- 29 authorise the Minister of Finance and the Minister of Transport to consider whether and how the Sponsors' Agreement addresses development opportunities created by the City Rail Link and consideration of the potential for value capture as part of future infrastructure projects in Auckland;

Tax treatment

- 30 note that City Rail Link Limited could be required to pay GST and income tax;
- 31 agree that the Project Delivery Agreement should provide for the Crown to reimburse Auckland Council and City Rail Link Limited for any tax incurred if necessary;

- 32 note that the City Rail Link Limited payment of GST and income tax is not included in the gross cost estimate for the project, and that any additional funding required will need to be appropriated and managed against Budget allowances;
- 33 note that the Ministry of Transport and Treasury will continue to work through City Rail Link Limited's GST and income tax requirements, and will report back to the Minister of Finance and the Minister of Transport with a proposal for managing this;

Timing for City Rail Link Limited to assume project responsibilities

- 34 note that the Project Delivery Agreement includes certain conditions that need to be satisfied prior to it coming into effect, and that these conditions are also required prior to Crown funding coming into effect:
- 34.1 execution of a transfer agreement between Auckland Transport and City Rail Link Limited, in a form satisfactory to and approved by the Sponsors;
 - 34.2 execution of an agreement providing for an appropriate arrangement for support from Auckland Transport, that sets out the rights and obligations of both parties with respect to delivery of the City Rail Link in a way that integrates with the regions wider transport network;
 - 34.3 adoption of a revised company constitution;
 - 34.4 obtaining an Order in Council under section 3AB of the Public Finance Act 1989 providing that City Rail Link Limited is listed in Schedule 4A of that Act (already satisfied, LEG-17-MIN-0055);
- 35 note that until the conditions precedent above are met, the Heads of Agreement continues to govern project delivery arrangements, unless the Sponsors agree otherwise;
- 36 note that work to establish City Rail Link Limited as being in a position to deliver the project includes the appointment of the remaining directors and the completion of an application for City Rail Link Limited to be a requiring authority under the Resource Management Act 1991;
- 37 note that there are several other matters that will need to be in place as soon as possible after City Rail Link Limited is operational to ensure it is fully equipped to deliver the project and that all statutory requirements are satisfactorily fulfilled, namely:
- 37.1 agreements between City Rail Link Limited and each of Auckland Transport and KiwiRail;
 - 37.2 a Deed of Settlement;
 - 37.3 execution of an Order in Council under section 7 of the Local Government Act 2002 exempting City Rail Link Limited from being a council-controlled organisation;

Further work

- 38 note that following Cabinet decisions, the Minister of Finance and the Minister of Transport will continue to oversee the development and finalisation of the Project Delivery Agreement and Sponsors' Agreement to reflect the key terms agreed by Cabinet;

Delegated authority for Ministers

- 39 authorise the Minister of Finance and the Minister of Transport to finalise and sign the Project Delivery Agreement and Sponsors' Agreement on behalf of the Crown;
- 40 authorise the Minister of Finance and the Minister of Transport to perform the duties of the Crown as a Sponsor under the Project Delivery Agreement and Sponsors' Agreement, and to sub-delegate authority to perform those duties where appropriate;

Publicity

- 41 note that the Minister of Finance and the Minister of Transport will work with the Mayor of Auckland on any possible publicity at the time of the signing of the Project Delivery Agreement and Sponsors' Agreement.

Janine Harvey
for Secretary of the Cabinet

Hard copy distribution:
The Cabinet

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